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H. W. Hannah  
N. G. P. Krausz

University of Illinois  
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College of Agriculture  
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Service Circular 1079





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ILLINOIS  
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LAW

**T**O PROVIDE the greatest measure of justice for the greatest number is the purpose of law in a democratic society. But nothing is more complicated than the effort to see that justice is done. As population and means of communication increase and interests overlap, laws become more numerous and their administration more complicated. We live in a web of legal restrictions, which, however, we normally think very little about.

Probably the reason we give these restrictions little thought is that in reality they assure each of us freedom and protection. The first purpose of our laws is to protect what we regard as fundamental human rights, then to see to it that justice is done so far as possible in all our day-by-day dealings with each other.

This circular contains only a very small part of our total body of laws — merely some of those that concern farm people and those in related businesses. Furthermore it describes only Illinois law; it makes no attempt to review federal laws and regulations comprehensively.

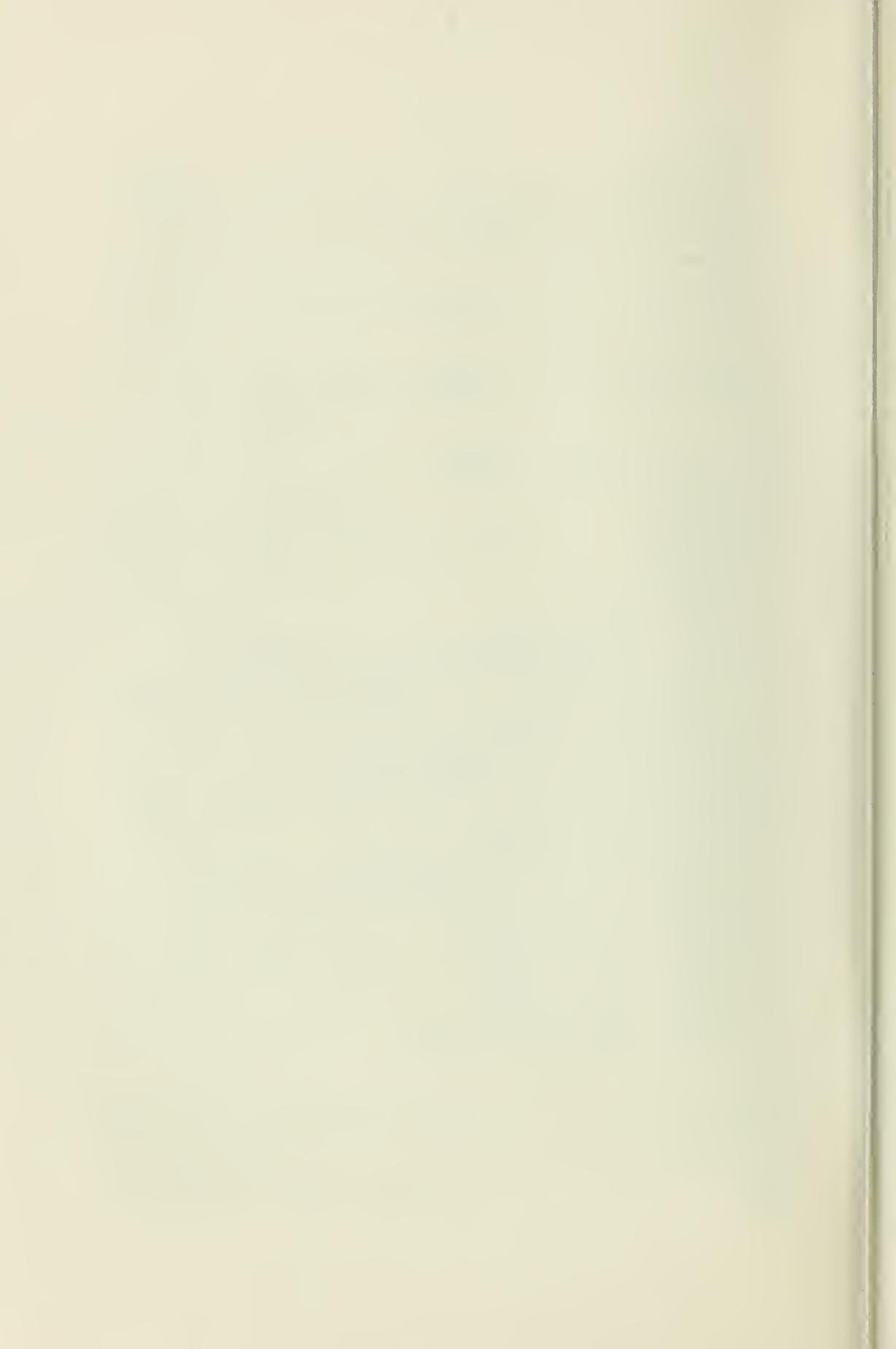
The information included here will not enable anyone to act as his own lawyer. The purpose of the circular is rather to give its readers two kinds of help: first, information concerning their rights and responsibilities; second, a better realization of situations that may contain legal dangers. Knowing when a situation is dangerous or likely to become so will enable a farmer to consult a lawyer in time to settle issues that could lead to costly and long-drawn-out disputes.

**H. W. Hannah and N. G. P. Krausz are Professors of Agricultural Law and members of the Illinois bar.**

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# **Part | Personal and One | Property Law**

**O**UR PERSONAL AND OUR PROPERTY rights and responsibilities are defined by a body of law called the common law and by statutes.

The common law consists of a body of "unwritten" law; that is, law not written by legislative bodies but gradually developed by the decisions of courts over a long period — hundreds of years — and generally accepted in the English-speaking world. Our statutes are the written acts of our legislative bodies.

Laws having to do with personal and property rights may be called nonregulatory to distinguish them from laws that require certain things of businesses — that they be inspected or that they be operated according to certain rules.

## **Real Property**

The chief distinction between real property (real estate) and personal property is that real property is relatively immovable. The land and the improvements permanently attached to it — barns, fences, wells, tile lines, and like fixtures — are regarded as real property. Ownership of real property is usually called holding the title to it. "Holding title" usually means that the ownership is evidenced by an instrument that the law recognizes as a proper means of transfer, ordinarily a deed or a will; however, it is possible to hold title without having an instrument.

For further information concerning the distinctions between real and personal property, see pages 18-19.

### **DEEDS, ABSTRACTS OF TITLE, AND LAND REGISTRATION**

**Warranty deeds.** Next to having our personal liberties defined and protected, we are perhaps more interested in the laws that secure property titles than in any others. The security of title to real estate depends in large measure on the existing facts which affect the title and the covenants or promises the seller makes the buyer. After a buyer has taken title, he may find it faulty. But if he does and if the seller has warranted

a good title, the buyer can make him perfect the title. Or, if the buyer loses the property through the faultiness of the title, he can sue the seller for damages.

A seller may make two kinds of warranties, or promises — express and implied. *Express* warranties are those written into the deed. *Implied* warranties are those which are legally a part of the deed even though not specifically mentioned in it.

Years ago the Illinois legislature provided that deeds for the conveyance of land may be in substantially this form:

**(Form for Deeding Land)**

The grantor (here insert name or names of seller or sellers and place of residence), for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert grantees, or buyer's, name or names) the following described real estate \_\_\_\_\_ (here insert description)\_\_\_\_\_, situated in the county of \_\_\_\_\_, in the State of Illinois.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_\_.

(*Signature of seller*)\_\_\_\_\_

(*Printed or typed name of seller*)\_\_\_\_\_

(Add as many lines for signatures as there are sellers.)

A law requires that any deed or instrument of conveyance or any instrument that requires recording shall have printed or typed beside or below all signatures the names of *all* parties signing each instrument.

The law further provides that the name and address of the person to whom the tax bill shall be sent shall appear on a new deed or instrument of conveyance.

This act also requires a newly executed instrument of conveyance or deed which describes the property by metes and bounds to have a general description locating the property in the proper quarter section or lot, or lot and block, preceding the metes and bounds description. The act provides that failure to comply with any of these special provisions will not invalidate the instrument.

This law also provides that every deed substantially in this form and duly executed shall be regarded as a legal conveyance, in fee simple, to the buyer (or grantee), his heirs, or to anyone to whom he may assign the property.<sup>1</sup> It further provides that the following covenants are implied by the seller (or grantor) in such a deed:

1. At the time the deed was delivered the seller had an indefeasible estate (estate free of claims), in fee simple, with the right and power to convey (that is, to transfer) the real estate described.

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<sup>1</sup> With a few exceptions, all voluntary transfers of real estate, whether as gifts or for substantial consideration, must be evidenced by a deed except when property is disposed of by will or is inherited under the laws of descent.

2. The property was at that time free from encumbrances (claims or liens).

3. The buyer will have quiet and peaceable possession, and the seller will defend the title against all persons lawfully claiming it.

**Quitclaim deeds.** Quitclaim deeds are used mainly to clear titles to property. All who have even a remote interest in the property — often an interest too minor to be of any value — relinquish it by making a quitclaim deed to one person. That person then holds, if all interests are thus transferred to him, a clear title to the property.

A law passed by the Illinois legislature provides that quitclaim deeds made out in substantially the following form and duly executed shall be a sufficient "conveyance, release, and quitclaim" of all existing rights in the premises described in the deed:

**(Form for a Quitclaim Deed)**

The grantor (here insert seller's name or names and place of residence), for the consideration of (here insert consideration), conveys and quitclaims to (here insert grantees or buyer's name or names) all interest in the following described real estate (here insert description), situated in the county of \_\_\_\_\_, in the State of Illinois.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_.

(Signature of seller) \_\_\_\_\_

(Printed or typed name of seller) \_\_\_\_\_

Such a deed as the above does not, however, convey any rights acquired in the property *after* the deed was executed, unless the deed specifically so states.

**Abstracts of title.** If you are buying farmland, you need to know at least two important things about it: (1) the real value of the land in terms of its earning power, and (2) the condition of the title. In most states the title to land is not made a matter of public record, but instruments affecting it are recorded in the county courthouse.

The only way you can know whether the seller can give you a clear title to the land is to get a good abstract of title. This is a summary of the essential facts in all conveyances (instruments or deeds conveying title to the property) or encumbrances in any way affecting the title. Although in Illinois the county boards of supervisors may require the county recorder to keep abstract books, few county recorders have actually been required to do so. Abstracts are therefore usually prepared by private companies.<sup>1</sup>

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<sup>1</sup> Making an abstract of title means first searching the records in the offices of the county recorder, county clerk, and circuit clerk for instruments affecting the title to the property — deeds, mortgages, releases, divorce decrees, etc. Then the essential facts in each instrument or record must be summarized. Each summary is numbered and placed in position according to date. All records, summarized, chronologically arranged, and stapled together, form the abstract.

An abstract is not a guarantee of good title, though many people seem to think it is. It is simply a summary of every item on record affecting the title to a parcel of real estate. It may show the title to be very weak. But that is the purpose of an abstract — to show up any flaws and give the buyer a chance to have the seller clear the title.

When you get the abstract, the safest thing to do is to take it to a lawyer who has experience in preparing and examining real-estate documents. He will be able to pass judgment on the facts abstracted and detect any important omissions in the records.

The cost of having an abstract made and having it examined is sometimes high. A system of land registration or of public abstracting would relieve the individual of the cost of abstracting the records and examining the title. Under the present system of recording, however, anyone who intends to lend money on land or to buy land will find it good business to get an up-to-date abstract from a reliable company and have it examined by an experienced title examiner.

**Title insurance.** Title insurance provides the purchaser of real estate with security against any imperfections in his title that may later appear. A policy is usually issued for a single premium and remains in effect until the title is transferred to another. The amount of insurance taken usually covers the price paid for the property. If, however, vacant property is purchased and expensive improvements are to be made, the amount of insurance taken may also include the cost of anticipated improvements.

A title insurance policy may be obtained from any of several companies operating in Illinois. The purchaser may apply for title insurance at any time after he takes title to real property, or he may request that the seller furnish him with a title policy as a condition in the contract of sale.

**Land registration.** In Illinois it is possible for a county, under certain conditions, to institute the "Torrens system" of registering titles to land.<sup>1</sup> The basic principle of this system, named for the Australian who invented it, is the registration of the *actual* title to land, instead of, as under the old system, the *evidence* of such title. The Illinois law states the object to be "to create an independent system of registration of land titles, and cause all instruments intended for the purpose of passing or affecting any title to real estate to be filed and registered in that department and no other."

Many students of the problem feel that the Torrens system is a simple, economical way of handling land titles and that it should replace the

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<sup>1</sup> In Illinois, if half the legal voters of a county petition for the adoption of the Torrens system, the question whether it shall be adopted must be submitted to a vote. The number of people which must petition, however, is so high that it is very hard to get the issue voted on. In Cook County, where only 2,500 legal voters were required to petition and bring the issue to a vote, the plan was adopted many years ago, and a part of the land in Cook County is now registered.

Under the Torrens system registering the title requires a court proceeding. Claims not settled in the proceedings are settled from an indemnity fund. Transfers and charges, tax sales, cancellation of certificates, and similar things which affect registered land are provided for.

present system. Others feel that there would be no advantage in adopting it. The development of photomicrography (a system allowing long documents to be photographed, reduced in scale, and stored as negatives in a small space) may simplify the present system of keeping records. Those in favor of land registration, however, maintain that the issuing of certificates of title to land by appropriate governmental agencies is a service to which the public is entitled.

#### DORMANT OIL AND GAS INTERESTS

Many Illinois farmers do not have title to the mineral interests in their farms. Often these interests have been forgotten and the owner of the mineral interests never intends to use them. A new Illinois law requires filing a notice with the county recorder that the owner does not intend to abandon the oil and gas interest if, for a period of 25 years, (1) there has been no actual production, mining, or drilling, and (2) no transaction that requires a document to be filed in the county recorder's office has taken place. Such transactions include the sale, devise, mortgage, or lease of the subsurface interest.

The law requires filing only for oil and gas leases and does not apply to coal or other mineral interests. Further, it applies only when the ownership of the surface and the subsurface interests are in two different persons. Failure to file by September 22, 1972, or within 25 years after the last transaction involving the oil and gas interest, will cause the oil and gas interest to vest in the owner of the surface interest.

By filing with the county recorder a verified affidavit describing the oil and gas interest and its nature, thereby stating an intent not to abandon it, the owner of the interest preserves his interest for another 25 years. If after that time no transaction as described previously has taken place and there has been no actual production, another filing will be required. There is no limit to the number of filings allowed.

#### WILLS, ESTATES, AND LIFE ESTATES

**Wills.** Good wills are not as hard to make as most people think. Bad wills are nearly always the result of hasty preparation, unclear language, failure to conform to certain simple legal requirements, or the maker's attempt to provide for too many possible events or conditions.

Under Illinois law a will to be valid must meet these conditions:

1. The maker must be of sound mind and memory and at least 18 years of age.
2. The will must be in writing and be signed by the maker, or by someone for him in his presence and by his direction.
3. Two credible adults must witness and sign the will in the presence of the maker. These witnesses must be ready to swear before the circuit court, when requested to, that they saw the maker sign the will, that the maker acknowledged to them that it was his act, and that they believed the maker to be of sound mind and memory.

It is not necessary to put dates and addresses in a will, though certainly inserting a date to show when the will was made is a good plan, and, as a matter of practice, addresses of the witnesses are usually added. The language should be so simple and direct that the will cannot be misinterpreted. Of course the safest thing to do is to consult a competent attorney about the wording of a will. The courts have had to interpret the meanings of certain phrases often used in wills; and those interpretations have come to be accepted in Illinois courts. There is some danger that the maker's intent may not correspond with these interpretations.

Wills may be used to dispose of all kinds of property, both real and personal, to create trusts, or to give many kinds of limited interests in property. The following will, consisting of one simple sentence, is all that is needed in order for the maker to leave his property to his wife.

## LAST WILL

January 1, 1973

I give all my property, both real and personal, to my wife, Sarah.

(Signature) John Jones

Witness: (Signature) Richard Roe

Witness: (Signature) Mary Brown

Other clauses, however, providing for the revocation of prior wills, prompt payment of debts, defrayment of funeral expenses, and the naming of an executor, are normally included in a will. Also an attestation clause (a statement by the witnesses that the will was executed in their presence and in the presence of each other) is usually inserted by an attorney, just before the space for the signatures of the witnesses.

**Estates.** An estate is defined legally as "the interest which anyone has in lands, or in any other subject of property." This interest may vary from absolute ownership (a fee simple) to mere possession.

Whatever the legal definition, the average man thinks of an "estate" as the land and other property left by a deceased owner and not yet completely "administered," or land and other property held undivided by the heirs of a deceased owner.

When the heirs of an owner who has died hold farmland undivided, serious management problems are likely to arise. It is often hard for them to agree on how they shall rent the land, what improvements they shall make, and what, in general, to do as landlords. When this happens, it is usually best to hire a competent manager.

When one of the heirs stays on the farm, operating it as a tenant, questions arise as to what interest each heir should have and what expenses each should bear. Assuming that there are five heirs, the one operating the farm should get the tenant's share and also one-fifth of the landlord's share. In return for his landlord's share, he should bear one-fifth of the expense of improving the real estate, one-fifth of the taxes, and one-fifth of all other landlord expenses.

When several persons are common owners of a farm (usually as tenants in common), many legal complications can arise, especially if one of the persons dies leaving several children or if there are children of deceased children. Owners in common would often be wise to make a settlement, transferring the title to one heir or selling the farm to someone outside the family.

**Life estates, remainders, and reversions.** A good many people hold land who are entitled only to a life interest. Such people are technically known as *life tenants*. Actually they are not tenants within the common meaning of that term; they resemble owners more than tenants. During their lifetime they may rent the farm to others, farm it themselves and take all the income, or make nearly any use of it they see fit. They cannot, however, mortgage or sell the land because they are entitled *only* to the use of the property and do not have legal title. The fee, or title interest, belongs to some person who has been designated to take the land at the death of the life tenant or, if no one has been so designated, it belongs to the heirs of the one who created the life estate. Persons designated to take land at the death of the life tenant are called "remaindermen"; if no one is designated to take it, the "reversion" belongs to the creator of the life estate or his heirs or assigns. They are called "reversioners."

Life estates may be created by will or deed. When a person creates a life estate, however, he usually does it to assure a given person an income during life; but he may also wish to designate what shall happen to the land at the end of the life tenancy. Farm owners, for example, frequently deed the farm to their children, reserving a life estate in themselves. Or, a husband may make a will giving the land to his children, subject to a life estate in his wife.

Life tenants who are not related to the remaindermen or reversioners, or who have no interest in them, often use the land in such a way as to seriously impair its value to the next taker. Although life tenants cannot wilfully destroy buildings, timber, or other parts of the real estate, neither can the remaindermen compel them to use sound farming practices. For this reason many believe life tenancy to be a poor form of ownership.

No matter how long a tenant has rented a farm from a life tenant, he must yield possession of the property at the time the life tenant dies. It is, therefore, good practice for a person who rents a farm from a life tenant to get the signatures of the remaindermen to the lease.

When the death of the life tenant does terminate a farm lease, the person leasing the land is entitled to harvest any crops that may be growing on it even though the lease has expired because of the death of the life tenant; however, he must still pay rent. By Illinois law, if the life tenant dies on or after the day when rent is due, the entire rent is payable to the life tenant's estate. If the life tenant dies before that day, the rent is payable to the person next entitled to it under the instrument that created the life estate.

**Settling estates of those who have died.** When a person dies, the property he leaves, both real and personal, must be legally disposed of.

Most of the law concerning the administration of estates was consolidated into the Probate Act by the Illinois legislature in 1939. This act specifies the way estates are to be settled. When the person who has died has left a will, the will must be presented for probate by the person who has it in his possession. The circuit court in probate then issues letters-testamentary to the *executor* named in the will, or to another in accordance with provisions of the law. When there is no will, the person appointed by the court is known as an *administrator*. When both testate property (property *included* in the will) and intestate property (property *not included* in the will) are involved, the court may issue letters to an administrator with the will annexed.

Whether the person who takes over the management of an estate is an executor or an administrator, he is charged by law with the preservation and management of the estate during the period of administration, the collection and payment of debts, and with making a final accounting and settlement. Many other specific duties are prescribed by law but these are the principal ones.

Executors and administrators should be selected carefully. Unless an executor is appointed by the terms of the will to serve without security on his bond, he must post such security. An administrator must always post bond and security. When estates are not settled quickly and the property not put in possession of those who are to take it, the honesty, interest, and managerial ability of the executor or administrator becomes highly important. When several heirs retain undivided interests in the property after the estate is settled, the possibility of bad and disinterested management is increased still further.

*The legal procedures involved in settling estates are so complex that executors and administrators should have legal assistance.*

Administrators must be Illinois residents but nonresidents may be named in wills as executors. Each is entitled to a reasonable fee for his services. The amount they receive is determined by the court.

The Probate Act contains a provision for the simplified settlement of estates when the personal estate is less than \$5,000. The simplified procedure can be used, however, only when conditions specified in the act are met.

#### PROPERTY NOT DISPOSED OF BY WILL

When an owner of property dies without a will, the property descends to the heirs. The law governing the disposal of such property is called the law of descent. Property not disposed of by will is known as intestate property; one who leaves such property is known as the intestate. Each state has laws regulating descent; the following concerns Illinois law.

*When a spouse and children survive,* the spouse takes one-third of the personal property of the decedent absolutely and one-third of the real

property absolutely. The children take two-thirds of the personal property and two-thirds of the real property. If a child has died and left children, the children take their deceased parent's share. The right to dower (a life interest in one-third of the real property held by the deceased spouse during marriage) was eliminated effective January 1, 1972.

*When a spouse but no children or grandchildren survive,* the spouse takes all the personal property and all the real property absolutely.

*When children but no spouse survive,* the children take equal shares in the estate. If one of the children of the decedent has died leaving children, those children take their parent's share equally.

*When neither a spouse nor any children survive,* the parents, brothers, and sisters of the decedent take equal shares in the estate. A surviving parent takes a deceased parent's share. The children of a deceased brother or sister take their deceased parent's share equally.

When no spouse and no children, no parents, no brothers or sisters, or no children of brothers or sisters survive the decedent, the grandparents on both sides of the family share the estate. If there are no surviving grandparents or great-grandparents, collateral heirs such as aunts, uncles, cousins, etc. of the nearest degree of relationship take equal shares in the entire estate.

When there are no collateral heirs, the real property "escheats," that is, goes to the county in which the land is located; the personal property escheats to the county of residence of the decedent.

**Effects of law may prove detrimental.** In situations in which a man dies without a will, leaving a wife and children, the estate usually has to be divided. Its breakup may have several harmful effects. One of the children may try to buy out all the others and thus become heavily indebted. Or the children may sell their portions to adjoining owners and thus end what might have continued to be a productive farming unit. Partitioning the property between the widow and the children may be costly and slow, eventually burdening the land and perhaps subjecting it to unwise use while it is an unsettled estate.

Because of lack of competent and interested management, a decision of the heirs to remain as tenants in common and have the farm operated as an estate may not be a happy one.

**Harmful effects of this law avoided by a will.** An owner of property can prevent the difficulties that often arise under the law of descent by making a will or otherwise arranging for the disposal of his (or her) property at his death. Most farm owners want to leave their property in a manner that will be to the best interests of their families. One way to do this is for the owner to reach an understanding with the family concerning the wisest and most economic disposition of the property in the event of his death. Then the owner should take the necessary legal steps to carry out the understanding. At this point most owners will need an attorney's assistance. (For various ways of holding title and advancing family interest in farm property, see pages 16-18.)

### TAXES ON REAL PROPERTY

In Illinois farmers pay two kinds of taxes based on the value of their property: real estate taxes and taxes on personal property of corporations. The amount they pay is determined by two things: the assessed valuation of their property and the rate (percent) of the tax levy. The total rate at which property is taxed is made up of various taxes authorized by law and levied for the support of schools, roads, and other specified purposes. These rates are uniform in the same taxing district.

By law any citizen of Illinois may request a copy of the description, schedule, and statement of property assessed in his name and the valuation placed on it. Such a request should be directed to the county assessor or supervisor of assessments. With this information a taxpayer has some basis for deciding whether his property has been equitably evaluated.

In counties with a population of more than 200,000, owners of land used for agricultural purposes can have their land assessed at either its fair market value or its agricultural value and pay property tax on the lower assessment. An assessment of agricultural value must be requested by a verified application. When the agricultural use stops, the owner is liable for whatever taxes would have been paid for the past three years (plus five percent interest) had the land been assessed on its fair market value.

If, in comparison with the taxes of your neighbor, your taxes are not fair, it is because the value of your property, particularly your real estate if you are a farmer, has been assessed too high. Real estate and improvements are assessed in Illinois once in every four years. This assessment is known as the *Quadrennial or General Assessment*.

If you are not satisfied with the evaluation put on your property, you may apply in writing to your county board of review, asking for a revision of the assessment. The appeal or complaint must be filed by August 1 to affect the assessment for the current year.

If the decision of the county board of review is not acceptable, this decision is appealable to the State Property Tax Appeal Board or directly to a court. For all such appealable decisions, the taxpayer must be given written notice of the decision and of the right to appeal to the Property Tax Appeal Board. An appeal to the Property Tax Appeal Board must be made within 20 days after the date of the written notice.

If you fail to pay your taxes, the county may foreclose and sell the property. You may redeem the property within the period specified by law. If you do not, the property passes to the holder of the tax-sale certificate.

### BOUNDARY LINES

Disputes over property lines are sometimes hard to settle. The law prescribes this way for arriving at an agreement:

Whenever the owner or owners of adjacent tracts of land shall desire to establish permanently the lines and corners thereof between them, they may

enter [into] a written agreement to employ and abide by the survey of some surveyor, and after said survey is completed, a plat thereof with a description of all corners and lines plainly marked thereon, together with the written agreement of the parties, shall be recorded in the recorder's office of the county where the lands are situated; and the lines and corners of said survey so made and recorded shall be binding upon the parties entering into said agreement, their heirs, successors, and assigns, and shall never be changed.

This law also provides that when one owner refuses to have a survey made, the owner of the adjoining land may have a commission of surveyors appointed and the boundaries established.

The following laws are also of interest to landowners:

1. A law providing for the examination and registration of all surveyors.
2. A law permitting an owner to perpetuate facts relating to natural boundaries (streams, trees, rocks) by a petition to the Circuit Court.
3. A law providing that any person who knowingly damages any property of another (including boundary markers) without his consent, if convicted, is subject to a fine and imprisonment up to six months.

#### OWNER'S RIGHT TO SUPPORT OF HIS LAND

If you make an excavation near your property line that lets your neighbor's land cave in, your neighbor is entitled to be paid for the destruction of his "lateral support." If a coal company tunnels under your land and causes it to sink, you are entitled to damages for the loss of your "subjacent support."

*Lateral support* is the support to land in its natural state from the land which lies next to it.

You as farm owner have a right to lateral support from all owners whose land adjoins yours, even when part of the adjoining land is a road owned by the public. To what extent the right to lateral support would apply to damage caused by unchecked erosion on the adjoining land is an unsettled question. But the right of lateral support is effective against positive acts such as excavating or road grading. The damages recoverable are sometimes very small; but when a large area is affected, or buildings which for a long time have stood near the property line are caused to fall, substantial damages may be recovered.

Unless the adjacent landowner agrees otherwise, strip mines may not mine within 10 feet plus one and one-half times the depth of the excavation of the adjoining property line, except where the excavated wall is of sufficient hardness to resist erosion.

*Subjacent support* is the support to land from the land which lies under it. The right to subjacent support is important in agricultural areas where there is deep coal mining. Unless coal companies have contracts with the surface owners which excuse them from furnishing adequate support, they must use a reasonable degree of care to see that their tunnels are well enough propped to prevent the land from "sinking."

### PROTECTION AGAINST TRESPASS

Many years ago the legislature passed the first general law against trespass. In amended form, it reads as follows:

Whoever enters upon the land or any part thereof of another after receiving immediately prior to such entry notice from the owner or occupant that such entry is forbidden or remains upon the land of another after receiving notice from the owner or occupant to depart shall be fined not to exceed \$100 or imprisoned . . . not to exceed 10 days.

A person has received notice . . . if he has been notified personally, either orally or in writing, or if a printed or written notice forbidding such entry has been conspicuously posted . . . at the main entrance to such land. . . .

This law gives farm owners and occupants protection against negligent hunters and pleasure seekers. In addition, the Illinois Game Code contains penalty provisions for unlawful trespass when hunting.

### ATTRACTIVE NUISANCE

Landowners or tenants may be held liable for injury to trespassing children who are injured by dangerous agencies on the land. The most common example of an attractive nuisance is a farm pond. The theory is that a person owning or controlling land that has a pond or any other agency very attractive to children is negligent unless he takes some precaution to protect children from trespassing or being injured. The doctrine of attractive nuisance is especially likely to be applied if the owner knew or should have known that children frequented the vicinity and were likely to be attracted to the pond or other agency. Generally the danger is one that a child, because of his immaturity, is not able to recognize.

### FISHING, HUNTING, AND TRAPPING RIGHTS

Although in Illinois the law holds that the ownership of fish and game rests in the state, the legislature felt that the people living on the land should have certain hunting and fishing rights that others do not have. It therefore passed several laws on this subject. The law on fishing reads as follows, and there are similar laws governing hunting and trapping.

The owners or tenants of farm lands, and their children, actually residing on such lands, have the right to catch or take with a hook and line fish of the kind permitted to be taken or caught under the provisions of [the Fish and Game Codes] from the waters lying upon or flowing over such lands, of which they or their parents are the bona fide occupants or tenants, *without* procuring licenses . . . , providing such fishing shall be done during the lawful season. (Emphasis added.)

Any owner or tenant who intends to hunt, fish, or trap under these laws should clearly understand two things:

1. Only *occupants of the land* are excused from procuring a license. Even the children of an occupant must live at home to enjoy this privilege. An owner who does not live on his land must get a license to hunt, fish, or trap on his own land.

2. The law simply excuses occupants *from getting a license* to hunt, fish, or trap. It does not excuse them from other provisions of the Fish and Game Code, nor from getting a license if they want to hunt, fish, or trap on land belonging to anyone else.

Boys and girls under sixteen years of age do not need a license to fish with hook and line. They cannot, however, hunt and trap away from home without a license.

An active member of the armed forces of the United States who is an Illinois resident and who entered the armed forces from Illinois may hunt and fish in Illinois without a license while on leave — but only to the extent that an Illinois resident could with a license.

Another law has to do with a farmer's right to protect his crops and livestock from wild animals and birds. In order that he might exercise this right without incurring a penalty under the Game Code, the legislature enacted the following law:

The owners and tenants of lands may destroy any wild bird or wild animal, other than a game bird or migratory game bird, when such wild bird or wild animal is destroying property upon his or her land by obtaining written permission from the Department of Conservation.

The law sets up a methodical plan for eliminating muskrat, beaver, ground hog, and other rodent populations, by poison if necessary. The fur may be marketed, contrary to past laws on this subject.

#### SNOWMOBILES

Illinois now has provisions regulating snowmobiles. The law requires registration of all snowmobiles. Various safety equipment such as head and taillights are also required before a snowmobile may be operated. Operators may be stopped at any time by agents of the Department of Conservation or by other police officers to determine whether the snowmobiles are in compliance with the law.

Snowmobiles may not be operated on public roads except to cross them. Operation on private property is prohibited without permission of the owner or occupant. The owners or occupants of the land do not incur any liability for injuries unless they charge money for the right to operate the snowmobile on their land. No one may operate a snowmobile without a valid motor vehicle driver's license.

#### LAWS CONCERNING TREES

Questions are often raised about the rights which owners of adjoining property have in trees growing on a boundary line. The general rule is that the owners are *tenants in common*; that is, each of them owns an *undivided* interest in the tree. A rule giving each of them the part of the tree on his property would allow either virtually to destroy the other owner's part without his consent.

When fruit trees grow on one man's property and overhang the adjoining property, the general rule is that the overhanging fruit belongs to the

owner of the tree. The owner of the adjoining property, however, may trim the branches or roots of any tree overhanging or encroaching upon his land, provided that he trims only the part on his side of the property line. The law makes special provision for hedge fences growing on division lines (see page 43).

The earliest Illinois law on trees imposed a fine for going on other people's property and cutting trees of any of a number of species. The same penalty was imposed for cutting trees on property belonging to churches and schools. Such destruction of property is now a misdemeanor under the criminal code.

The law imposes a penalty for allowing trees to obstruct highways or large streams important to drainage and for destroying trees used as boundary markers. It is also unlawful either to destroy or plant trees along state highways without the consent of the Department of Public Works and Buildings.

The native oak is by law the state tree. The last Friday in April of each year is designated by law as Arbor Day. Individuals and public agencies of various kinds are urged to take part in tree-planting ceremonies on this day.

Besides the laws here discussed, there are many on forestry, forest preserves, and protection against forest fires.

#### HOW TO BUY FARM PROPERTY

Buying a farm is a costly venture. If you are buying one and want to be sure that it is worth what the seller is asking for it, you will either make a thorough appraisal yourself or have one made. In such an appraisal should be included the soil, the improvements, the expected income and expenses, the location and home uses, and all other factors affecting value. If, after the appraisal is made, you are sure that the farm is worth the price, you will have to take some or all the following steps:

1. *Find a credit agency to finance the purchase.* Choose an agency that will lend you the money you need on an amortized payment plan (a plan that provides for the reduction of the debt by pre-arranged and equalized installments), and that will charge not more than the going rate of interest. You will do well to get as long a term and as low an interest rate as you can.

2. *Draw up a contract with the seller.* You and the seller will both sign this contract. Among other things, this contract should clearly specify the following conditions of sale:

- (a) The amount of the purchase price and how it is to be paid.
- (b) That insurance policies in force on the property shall be transferred to you, and that any payment for losses occurring following the date of the contract shall be payable as the interests of the parties appear.
- (c) Whether crops not yet harvested or divided, agricultural-conservation payments not yet paid, or cash rent not yet due are to go to you or to

the seller, or how they should be handled. (Provisions covering these points will depend somewhat on the time of year the farm is sold.)

(d) Whether you or the seller are to pay current taxes, assessments, and insurance premiums. (These may be divided between you and the seller, the amounts each of you are to pay depending on the amount of the current term of each item that has elapsed at the time of the sale date, or of taking possession, or of taking title. Sometimes the buyer simply agrees to pay all future installments. As a general rule, taxes assessed for the current year are paid by the one who gets the crops.) Under the 1954 Internal Revenue Code, the property tax is divided between purchaser and seller as of the date of sale, irrespective of the provisions in the contract.

(e) That the seller shall pay all past assessments, taxes, or obligations of any kind against the land, prior to final settlement.

(f) That the seller shall provide an up-to-date abstract showing a clear and merchantable title or a title insurance policy.

(g) That the seller shall deliver to you a warranty deed free of exceptions or conditions at the time you make your final settlement with him.

(h) Any special things which the seller agrees to do before delivery of possession, such as repairing a building or well.

3. *Reach an agreement with the credit agency.* The agreement must specify the following: (a) the amount you are to borrow; (b) the interest rate; (c) the period for repayment; (d) the number, amount, and date of your annual installments; (e) your repayment privileges, particularly the amount of principal you can repay in any one year; (f) appraisal fees or other loan charges; (g) any special provisions to apply if you fail to repay the loan.

4. *Have a warranty deed executed by the seller.* (a) See that this deed is placed in the hands of an escrow agent at the time you make the contract. (The lending agency often acts as escrow agent.)<sup>1</sup>

(b) See that the deed specifies in whom the title is to vest (if joint tenancy is desired, be certain to use the statutory phrase, "not in tenancy in common, but in joint tenancy with right of survivorship").

(c) See that it is signed by the seller and the seller's spouse (husband or wife), contains a properly executed waiver of homestead rights, and is acknowledged before an authorized person.

5. *Have the abstract examined.* An attorney should be employed to do this.

6. *Have any defects in title cleared.* It is the seller's obligation to do this before a final settlement is made.

7. *Have the deed recorded.* Do this as soon as it is received.

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<sup>1</sup> An *escrow agent* is a person to whom a deed, bond, or other written instrument is delivered; he holds it until the performance or fulfillment of some condition. The deposit places the deed or bond beyond the control of the grantor but generally no title passes until the fulfillment of the condition.

8. *Check the mortgage and notes.* See that they are in accord with the original agreement concerning the terms of the loan. A trust deed is often used in place of a mortgage.

9. *Consider these additional points.* Some of the following points should be cleared early in your planning, some later:

(a) Who is now occupying the farm? Is he a tenant, and what are his rights? Does he have a written lease? When can his lease be terminated and you take possession? What are his rights in crops and improvements now on the land? (He may own hog houses, hen houses, brooders, temporary fencing. Find out.)

(b) If you are buying the farm through a real-estate firm which offers to find you a loan, be sure that the service offered is competent, that the companies or individuals the real-estate firm chooses are thoroughly reliable, and that the costs are not out of line with those that other companies or individuals would charge.

(c) Be sure that there are no valid liens,<sup>1</sup> judgments,<sup>2</sup> or other obligations against the property that would not appear in the abstract.

(d) Find out if anyone has an easement<sup>3</sup> to the use of the land as a roadway or for other purposes.

#### FAMILY INTEREST IN THE OWNERSHIP OF FARM LAND

The legal interest an owner has in farm land or other real estate may be one of several kinds. He may hold the land in fee simple (the highest kind of ownership). He may have a life interest in it, or he may be entitled to take it only on the death of the life tenant. He may also have one of several other kinds of legal interest in it, some of which, especially those dependent on future events, make ownership insecure and uneconomic. Likewise some kinds of ownership are not so well adapted to some situations as are others.

Suppose a young farmer and his wife, without children, have inherited a farm or part of a farm, or that they bought a farm before they had children. They farm it themselves. Since successful farming is a joint enterprise involving willing and intelligent cooperation between husband and wife, they will be equally interested in the ownership and use of the land. And they will want to make sure that, if either should die, the one who remains can use or dispose of the assets with as little interference and expense as possible.

**Disadvantages of sole ownership.** In a case like the above, either the husband or wife could take ownership in fee simple, but, even if there are no children, such ownership would be open to at least three objections should the owner die: (1) the estate would have to be administered, a

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<sup>1</sup> A *lien* is a legal claim or charge against specific property to secure payment of some debt.

<sup>2</sup> A *judgment* is an obligation created by the decree of a court.

<sup>3</sup> An *easement* is the right of the owner of one tract of land to make some use of a tract belonging to another.

costly operation at best; (2) during the period while the estate was being settled, the surviving spouse would not have unhampered use of the property; and (3) by the laws of descent in some states, but not Illinois, part of the land would go to the decedent's parents or brothers and sisters.

**Advantages of joint tenancy.** In this case a joint tenancy would probably be better than sole ownership in fee simple. Should one or the other die, title and ownership of the property would immediately pass to the other spouse and the farm would not be a part of the estate to be administered.<sup>1</sup> By *joint tenancy* is meant an undivided ownership of property by two or more persons, each having the right to take immediately all the property or his increased interest in it on the death of one of the joint tenants.

Illinois requires that a specific statement that a joint tenancy (not a tenancy in common) is intended appear in the deed. If such a statement does not appear in the deed, the conveyance will be called a *tenancy in common*. A tenancy in common differs from a joint tenancy in that it does not carry the all-important right of survivorship, so that when a tenant-in-common dies his share must be set aside and administered.

If this man and his wife should have children, a joint tenancy may still be the best type of ownership for them so long as the children remain dependent. But when the children become older, it may be best to make some other arrangement. If there are boys interested in farming, it might be desirable when they are through school to include them in the title. If the farm is small and more than one son is interested, it might be better to include one son as a joint tenant and help the others get established in business or on another farm. If no sons are interested in farming but there are daughters who are, a similar arrangement could be made for them.

A conveyance to one son with charges on the land in favor of the other children is another possibility. The charges should be reasonable, so they will not burden the land.

**Advantages of life estates and remainders.** Farm owners who want to settle the title to the farm before their death and make sure that it passes on to the one interested in operating it often give that person a remainder and keep a life interest themselves. This gives the present owner the continued use and income from the farm for his lifetime. When he dies, all rights to the farm pass immediately to the remainderman without administration.

When life estates are created voluntarily in this way, the life interest is not likely to be harmful to the interest of the remainderman. As a matter of fact, the remainderman will probably be on the farm as a tenant of the person who holds the life interest long before that person's death. (For times when a life estate may be a poor form of ownership, see *Life estates, remainders, and reversions*, page 7.)

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<sup>1</sup> It would, however, be subject to estate and inheritance taxes. For a discussion of these taxes, see Illinois Extension Circular 1062, "Inheritance and Gift Taxes on Illinois Farm Property."

**Advantages of trusts.** A landowner interested in having his descendants receive an income from the property after his death often feels that no one in his family has the interest or ability to handle the farm either as a landlord or an operator. In such case he can convey the land to trustees to manage and arrange that they pay the income to named beneficiaries.

A farm owner who is responsible for the support of small children, a wife, aged parents, or other relatives may find it desirable to make a will which at his death will create a trust for the benefit of his dependents. If he lives and some of the children become interested in farming, he can alter the will and create a joint tenancy or a remainder in favor of the interested children.

An increasingly popular method of holding title to real estate is the Illinois Land Trust. This allows the recorded title to remain in a trustee while the individual owners can sell or dispose of their beneficial interests with the same ease as they could transfer personal property. This is quite advantageous when several persons have an interest in a single tract of real estate, particularly when they live in different states.

**Four steps to take to arrange a safe and satisfactory title for a farm family.** Many arrangements other than those named are possible. The object of any arrangement, however, should be to make sure that the land is not tied up during a long and perhaps costly settlement of the estate; that what was once a productive farm unit is not destroyed by partitioning; and that the heirs are protected.<sup>1</sup> But no matter what title arrangements are made, every owner of farm land should:

1. Get an up-to-date abstract for the property.
2. If the title is not clear, do whatever is necessary to clear it.
3. Decide, with the help of members of the family and other interested and competent people, what form of present and future ownership will best conserve the farm as a unit of production and also serve the best interests of the family.
4. Have the necessary legal documents prepared and signed.

## Personal Property

Personal property is any kind of property that is not real property. Land and the improvements permanently attached to it are real property. Money, stocks, bonds, household goods, livestock, farm machinery, clothing, jewelry, etc., are all personal property. For many purposes the law treats personal property, or "chattels," quite differently from real property. Following are some of the differences it makes:

1. Your personal property is *not subject to some of the tax laws* that govern the taxation of real property.
2. If you die without leaving a will, your personal property will pass first to the *administrator of the estate*. Real estate (real property) passes

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<sup>1</sup> For a discussion of situations which may arise when arrangements for disposal have not been made, see *Property Not Disposed of by Will*, pages 8-9.

directly and immediately to your heirs, subject to a right of the administrator to take possession during administration of the estate.

3. Your rights in personal property are determined by the *law of the state in which you reside*; your rights in real estate are determined by the *law of the state in which the property is situated*.

4. You can transfer personal property with fewer legal controls than those that govern real property. Real property must be conveyed in writing and in accordance with the statutes governing its mode of transfer.

5. The usual documents used to make personal property the *security for a debt* are security instruments and the forms required to perfect a statutory lien. The documents usually used to secure real estate are the mortgage deed and the trust deed.

6. The types of legal action which you can take to *recover personal property* or to *secure damages* for the loss of it are different from those you would use to recover real property or to secure damages for its loss.

7. If you are a tenant, you can take from *rented premises* the removable fixtures that belong to you, provided you remove them during your tenure; you cannot remove improvements or fixtures which are regarded as "affixed to" or a part of the real estate.

8. Future interests in personal property may be recognized by the law, but they are difficult to administer and should be avoided; future interests in real estate, however, are customarily recognized and are more easily administered.

## Instruments of Credit and Security

### INTEREST RATES

**Statutory rate.** According to common law, if you are lending money and fail to make an agreement with the borrower about the rate of interest the loan is to carry, you can collect no interest. To do away with this rule, the Illinois legislature established a statutory rate of not more than 5 percent to apply only when borrower and lender have not definitely contracted for or agreed on a different rate.

**Legal rate.** The legislature established 8 percent as the legal rate of interest. The interest agreed upon is part of a contract. Any agreement to charge a higher rate of interest (except as discussed below) causes forfeiture of any interest due under the agreement. The law also demands that a contract in which the interest is to be 8 percent be in writing. An oral or unsigned agreement will bear only 5 percent, the statutory rate.

Any finance charges imposed by the lender as added consideration for making the loan must be reduced to a percentage of the principle borrowed and included in computing the allowable 8 percent. There are, however, several special exceptions to the 8 percent limit:

1. A corporation may agree to pay more than 8 percent interest on a loan.

2. Anyone may charge more than 8 percent interest on a loan of not less than \$5,000, if it is repayable on demand and secured by warehouse

receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds, or other negotiable security pledged as collateral and if the loan is evidenced by writing.

3. A company organized under the Small Loans Act may make loans of \$800 or less and charge as much as 3 percent interest a month on the first \$150, 2 percent on the next \$150, and 1 percent on the balance over \$300.

4. Anyone may charge 7 percent interest on the entire amount of the loan until the last installment is paid if: (a) the loan is \$7,500 or less and the agreement is in writing; (b) the loan is not secured by real estate; (c) the repayment period is not more than 61 months; and (d) repayment is to be in two or more substantially equal installments. If the debt is repaid before maturity, the lender must refund any excess interest.

5. More than 8 percent interest may be charged for certain federally guaranteed or insured mortgage loans.

The law prohibits small-loan companies from encouraging borrowers to split or divide loans, to collect service charges and advance payments, and to compound interest. It also provides that companies may not obtain a higher rate of interest by permitting husbands and wives to have separate contracts for loans at the same time.

The law also contains detailed provisions for the licensing and bonding of small-loan companies and requires them to keep certain records. (For a further discussion of small-loan companies, see **Small loans**, pages 21-22.)

#### SHORT-TERM CREDIT

On July 1, 1962, the Uniform Commercial Code became law. The law removes the technical distinctions between chattel mortgages and conditional sales contracts, but their functions remain undisturbed. The law does not change the type of property that may be used as collateral to borrow money.

Both chattel mortgages and conditional sales contracts are now called "security interests." *A security interest is a legal right in personal property or fixtures to secure payment or performance of an obligation.* To be valid, a security interest must be in writing, must be signed by the debtor, and must describe the collateral. When the security interest covers crops, oil, minerals, or timber, a description of the land is necessary.

To be effective against innocent third parties, a security interest must be filed.<sup>1</sup> It is usually filed at the county recorder's office. Security interests in motor vehicles, however, are filed with the Secretary of State.

**Protection of buyers.** A buyer receives clear title if he is buying merchandise from a dealer. He takes the merchandise free of a security

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<sup>1</sup> In certain cases a security interest in consumer goods may be effective against third parties if it is not filed. An unfiled security interest may also be effective against third parties in certain transactions not ordinarily engaged in by farmers.

interest even if he knows a lien exists. For example, a person buying a refrigerator from an appliance store takes the merchandise free of any security interest. A buyer from a farmer selling farm products is an exception; the buyer is subject to any recorded security interest in the property or any lien of which the buyer has knowledge.

The law recognizes three general classifications of business transactions in which a buyer in good faith is protected from unrecorded security interests given by his seller to third parties.

1. *Buying from a businessman an item in which the businessman does not ordinarily deal.* The buyer is subject only to a recorded security interest in the item. For example, a person buying a refrigerator from a lumber dealer who does not ordinarily sell appliances is subject to any recorded security interest in the refrigerator but not to an unrecorded interest.

2. *Buying consumer goods, but not from a businessman.* A person who buys consumer goods is subject to a recorded security interest if he uses the item for personal, family, or household use or farming operations. The buyer is subject to any unrecorded security interest only if he buys for business use.

3. *Buying farm machinery from anyone other than a dealer.* A person who buys farm machinery from someone other than a dealer is subject to all recorded security interests but is not subject to an unrecorded security interest if his seller has had possession of the item for 10 days or more.

A farmer can give a valid security interest in a crop to be planted within 3 months even if a security interest in a prior crop is unpaid. In order for the second security interest to be valid the prior crop mortgage must be due six months before the new crop is planted, and the second security must be given to enable the farmer to plant the crop.

A debtor who defaults after paying 60 percent of the cash purchase price (60 percent of the value of the loan if the loan is made to buy items for personal, family, or household use) does not forfeit all right to the goods. The lender must sell the goods and refund any surplus to the debtor. If the debtor defaults before paying 60 percent of the cash purchase price, the lender may keep the goods.

To sell or dispose of mortgaged property without consent of the creditor is a criminal offense punishable by 1 to 10 years imprisonment.

**Small loans.** Farmers in Illinois use millions of dollars' worth of short-term credit every year. Some of this credit they obtain from companies specializing in small loans.

*Consumer Finance Act.* The provisions of the Consumer Finance Act subject small-loan businesses to certain regulations. The law allows these companies to charge up to 3 percent a month on the first \$150 of the unpaid principal of loans not larger than \$800. They may charge 2 percent a month on the next \$150 and 1 percent on the balance. This means that they may charge 30 percent interest yearly on \$300, 36 percent on \$150 or less, and between 30 and 36 percent on an unpaid principal balance of

\$150 to \$300. Monthly payments on the principal reduce the amount on which interest must be paid for any succeeding month. (See page 20 for further discussion of small loans.)

*Interest too high for farmers.* Small-loan companies have a place in the credit field. Still it is not good business for farmers to use credit that may cost them as much as 36 percent a year when they can borrow money for less. Moreover, a farmer who is in a business with a good turnover should try to pay cash for small items and use his short-term credit only in substantial amounts, at reasonable interest rates, for buying livestock, grain, or equipment. A dairy, poultry, or mixed livestock and grain farm usually has a large enough turnover to permit such money management.

#### LONG-TERM CREDIT

**Mortgages.** Farms are sometimes bought for cash. Most buyers, however, can pay only part of the purchase price and must borrow the rest. Money loaned on land is usually secured by a first mortgage.

A mortgage has been loosely defined as "a deed with a defeasance clause." This means that the borrower (*mortgagor*) makes a deed conveying legal title to the lender (*mortgagee*) on condition that when the amount specified has been paid, the deed will become void. The statement of this condition is the "defeasance clause."

In order to protect the mortgagor, Illinois courts have held that a deed without this clause in it may still be a mortgage if there is adequate proof that both parties intended it to be. It is important, however, that the mortgagor be sure he signs a mortgage, not a deed.

**Mortgage form.** To encourage the earmarking of instruments intended as mortgages, the Illinois legislature passed a law providing that mortgages may be in substantially this form:

The mortgagor (insert name or names) mortgages and warrants to (insert name or names of mortgagee or mortgagees) to secure payment of (insert nature and amount of indebtedness, date payment is due, rate of interest, and whether secured by note or otherwise) the following described real estate (insert legal description) situated in the county of \_\_\_\_\_, in the State of Illinois.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_\_.  
 (Signature) \_\_\_\_\_

Mortgages do not have to be in this form. Many agencies, however, now use a mortgage designated as the "statutory form," which incorporates the legislative provisions.

**Trust deeds.** Mortgages are commonly thought to be the instruments most generally used in making farm land the security for a loan or indebtedness. As a matter of fact, deeds of trust are widely used in place of mortgages. A deed of trust is:

*An instrument in use in many states, taking the place and serving the use of a common law mortgage, by which the legal title to real property (land and improvements) is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions.*

A trust deed differs from a mortgage principally in the fact that a third party is brought into the transaction for the sole purpose of holding title until the seller or lender has been paid. When the notes which the trust deed secures have been paid, the trust ends, a release is executed and recorded, and the legal title passes to the buyer.

Trust deeds are subject to foreclosure, redemption, and other legal processes in the same way as are mortgages. In Illinois notes secured by trust deeds are recognized as legitimate investments for guardians and conservators.

It is important that a trust deed state that it is security for a specific indebtedness (the amount, dates payable, rate of interest, and names of the parties are necessary), and that it is for the use or benefit of the legal holder of the indebtedness.

Trust deeds require the same signatures and acknowledgments as other deeds of real estate.

Trust deeds have uses other than that of securing indebtedness. For instance, they are frequently used to establish and endow charitable, educational, and religious organizations.

**Contract purchase of farms.** The use of the installment contract has long furnished one means of buying city property. The contract reserves the title in the seller until he is paid. An independent agent, usually a bank, keeps the deed until the contract has been performed, at which time the deed is delivered to the purchaser. The agent is known as an *escrowee* or *escrow agent*.

Farm land is not usually sold in this way. When a man buys a farm, he usually receives a deed and gives the seller a mortgage. He may sometimes, however, use a trust deed to secure the unpaid balance. In certain parts of the state there seems to be an increase in the use of the installment contract as a means of buying farm land. The contract defers delivery of the deed until a stated amount of the purchase price has been paid or a given number of installments made.<sup>1</sup>

Though such contracts can be adapted to the sale of farm land, they are often used by an owner simply as a means of getting more rent. Suppose you want to buy a farm and you sign a contract agreeing to pay the seller a specified yearly installment plus interest. The amount is often more than a fair rental. You also agree to keep up or to make improvements on the farm and to pay taxes and insurance. You may have made a small down payment besides. The seller holds the title and does not give you a deed until you have paid a given number of annual installments —

<sup>1</sup> For more information about installment contracts, see Illinois Extension Circular 823, "Installment Land Contracts for Farmland."

perhaps five. If you complete the contract, it will have been a very favorable arrangement for the seller. If you are not able to meet some installment, you can be put off the farm, and your payments will then go as rent. In the meantime you have paid the taxes, made improvements, and taken care of all farm expenses, including what would have been the landlord's share. If you made a down payment, the seller keeps it, too.

This method of selling land can be fairly used, but a seller sometimes uses it to encourage an unsuspecting tenant, who is anxious to buy a farm, to commit himself beyond the ability of the farm to pay. It is especially likely to be used by unscrupulous sellers in disposing of farms that appear to be much more productive than they are.

## Rights of Landlord and Tenant

### AGREEMENTS BETWEEN LANDLORDS AND TENANTS

Every tenant in Illinois who rents farm land holds the farm under some kind of agreement. It may be an oral or a written agreement, long or short, adapted or not adapted to the farm, and, as a written instrument, valid or invalid. In short, as a means of aiding the parties to it, it may be good, bad, or indifferent.

**Legal essentials of a written lease.** The most common agreement between landlords and tenants is a lease. To be legal a written lease must meet five requirements: (1) it must be *signed by both parties*; (2) it must specify a *definite period* during which the farm is to be leased; (3) it must contain a *description* of the property; (4) it must name a specific *lessor* (landlord) and *lessee* (tenant); and (5) it must provide for the payment of *rent*. A desirable farm lease contains, of course, more than these bare essentials.

**Oral agreement.** In the eyes of the law, if you rent a farm and do not have a written lease, you are a tenant from year to year. As a year-to-year tenant, you have only such rights as you are able to prove. Many oral agreements do not easily admit of proof.

**One-year leases.** A good many tenants, at the time they rent a farm, execute a one-year lease. If you are a tenant with such a lease, you must have it renewed in writing at the end of the year; otherwise you may find that your landlord can require you to move on less notice than that established in your original lease, or that issues which the original lease covered are not now covered since without renewal of the lease in writing you have become a year-to-year tenant. From your standpoint as a tenant, a fair lease in writing is highly desirable.

**Notice to vacate land.** Under a written agreement, a tenant is entitled only to the period of notice specified in his lease. If you are a tenant and have accepted the terms of a written agreement, one of which requires you to vacate the land immediately upon notice, you are bound by your agreement. If you do not have a written agreement, or if your written lease has

expired and you are holding the land as a year-to-year tenant, the law in Illinois requires the landlord (or his agent) to give you four months' notice in writing. If, for example, the term ends on March 1, as the terms of most farm tenants do, notice would have to be given you before November 1 of the preceding year.

The statute provides that notice may be given in substantially the following form:

To (name of tenant): You are hereby notified that I have elected to terminate your lease of the farm premises now occupied by you, being (describe the premises), and you are hereby notified to quit and deliver up possession of the same to me at the end of the *lease year*, the last day being (insert the last day of the lease year).

(Signature) \_\_\_\_\_

The period of notice provided by law does not always protect you (as a tenant) since it may be given after you have done your fall plowing and seeded wheat or spread limestone or fertilizer. By law you cannot recover in money for your work or seed or fertilizer, but you are permitted to harvest the wheat or other fall-seeded grain.

The best protection for both landlord and tenant is a good written lease, covering the essential points in the operation of the farm and specifying a long enough period of notice to give both parties a chance to make adjustments, preferably a period of six months to a year.

*(For more information about the law on farm tenancy, see Illinois Extension Circular 818, "Farm Tenancy Laws in Illinois.")*

**Landlord's lien.** (For discussion, see page 29.)

#### TENANT'S RIGHT TO TAKE REMOVABLE FIXTURES

Whether a tenant has a right to remove certain kinds of improvements erected at his own expense — hog houses, temporary fences, or cribs — is a question which often arises between farm landlord and tenant. Often neither has given any thought to the question until the tenant, having to move, proposes to take the improvements with him and finds that the landlord claims they are part of the real estate and must be left.

**Conditions tenant must meet.** An Illinois law clarifies to some extent the right of each. It provides that:

... subject to the right of the landlord to distrain [hold] for rent, a tenant shall have the right to remove from the demised [leased] premises all removable fixtures erected thereon by him during the term of his lease, or of any renewal thereof, or of any successive leasing of the premises, while he remains in possession in his character as tenant.

This means that if you are a tenant and are to be entitled to your privileges under this law, you must meet three conditions:

1. You must not owe the landlord back rent; if you do, the landlord may distrain (hold) the improvements.

2. You must have put the improvements on the land yourself.
3. You must remove them *before* your term expires; if you do not, you will not be on the land as a tenant, and you cannot, therefore, by law remove them.

This law does not cover specifically those cases in which the tenant brought improvements with him. The courts have indicated, however, that the term "erected" includes improvements brought onto the farm as well as those a tenant actually erected or built there.

**Removable fixtures.** The usefulness of the above law depends a great deal on the interpretation of the phrase "removable fixtures." The Illinois courts have held that a corn elevator set in a concrete foundation and a crib built on posts sunk in the ground are not removable fixtures, but that a blacksmith shop on skids is. *The general rule is that a fixture is removable when the parties intend it to be and when it can be removed without material injury to the land or other buildings.* As a matter of fact nearly any structure not fastened permanently to another building or put on concrete foundations can be removed. Such buildings would include individual hog houses, brooder houses, and similar structures.

Any question whether such things as fences, windmills, cribs, bins, or lean-to sheds can be removed should be settled in a lease. If you are a tenant without a written lease, or if the structure you are going to build is not covered by it, before you begin to build you should get a written agreement from the landlord allowing you to remove it or promising to pay you its fair unexhausted value when you leave.

#### LANDLORD'S RIGHT TO HARVEST CROPS

Occasionally a tenant abandons the farm before harvest without having made any arrangements to take care of the growing crops. When this happens the landlord's security for rent is endangered, and so the law protects him with this provision:

When a tenant abandons or removes from the premises or any part thereof, the landlord or his agent or attorney may seize upon any grain or other crops grown or growing upon the premises or part thereof so abandoned, whether the rent is due or not. If such grain or other crops or any part thereof is not fully grown or matured, the landlord or his agent or attorney shall cause the same to be properly cultivated and harvested or gathered, and may sell and dispose of the same, and apply the proceeds, so far as may be necessary, to compensate him for his labor and expenses, and to pay the rent: *Provided*, the tenant may, at any time before sale of the property so seized, redeem the same by tendering the rent due and the reasonable compensation and expenses of the cultivation and harvesting or gathering the same, or he may replevy [retake] the property seized.

In interpreting this law the Illinois courts have held that it does not give the landlord the right to mature and harvest crops growing at the regular termination of the lease, but gives him the right only when the tenant leaves before the termination of the lease. Though the act specifies

that the landlord is to retain only rent, labor, and expenses out of crop sales, the courts have held that he is also entitled to damages for non-performance of agreements in the lease. When the tenant redeems crops matured and harvested by the landlord, however, the landlord is entitled, according to the law, only to rent due and to reasonable compensation and expenses for cultivating and harvesting.

The law makes no provision for livestock which a tenant abandons.

### Farm Manager's Relations to Owner and Tenant

If you own a farm and hire a manager for it, the manager is legally your agent and the general laws of agency apply to your relations (there are no specific state laws concerning farm managers). As your agent he can make you liable on contracts executed in the regular course of the farm business.

Owners often give their farm managers these powers: to insure buildings and other property belonging to the owner and to pay the insurance premiums; to sell grain and livestock belonging to the owner; to buy as much seed, feed, fertilizer, livestock, and materials as is necessary to meet the owner's obligations under the lease; to plan and supervise the putting up or the repair of buildings and improvements; to hire skilled labor for building, painting, ditching, fence building, or other work for which the landlord is responsible; to pay taxes on the farm property; to collect the rent and pay it to the owner; to find or to change farm tenants; to enforce the landlord's lien for rent; to evict tenants who refuse to move after due notice; to work with tenants in planning crop, livestock, and soil maintenance and improvement programs for the farm.

Through negligence or neglect of duty, your farm manager may make you liable in personal injury cases. If, for example, he fails to have a dangerous well-top or a weak floor repaired, and someone comes to the farm and falls into the well or steps through the floor and is hurt, you may be liable for damages. Any provision in a lease agreement which exempts the landlord from this liability is void.

If you are a tenant operating under a manager, you may deal with the manager instead of the owner in all matters except those in which you have been told by the owner that the manager does not have the power to act for him. Before you pay the manager the rent or other money due the owner, or before you accept a lease signed by a manager, be sure you know what his authority is.

### Farm Partnerships

The use of livestock leases and profit-sharing plans between father and son or employer and employee have lately been increasing. Such leases or agreements are often called "farm partnerships." They are partnerships in the sense that they are joint and cooperative arrangements between an owner and his tenant, or a father and his son, for carrying on the farm

business and for receiving farm income proportionate to each person's contribution of land, equipment, livestock, feed, seed, fertilizer, machinery, labor, and operating expenses.

The general assumption is, however, that few of these arrangements are partnerships in the legal sense. Whether or not they are legal partnerships is important because if an owner and his tenant or a father and his son are in partnership, either of the partners can make contracts for the business, sell partnership property, or create partnership debts without the consent of the other. Moreover, the partnership would require a separate income-tax return and, should one of the partners die, there would have to be a partnership accounting.

The Illinois legislature in 1917 passed the Uniform Partnership Act, a standardized law now in effect in several states. This act defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." It also says what is not a partnership: joint ownership of property, common ownership of property, or part ownership does not of itself establish a partnership; sharing of gross returns does not of itself establish a partnership; the receipt by the landlord of a share of the profits, if received by him as rent, does not of itself establish a partnership.

By definition, therefore, many enterprises in which a tenant or a son contributes only labor would not be partnerships. Whether or not a partnership exists between the parties depends partly on their intention. One who has to deal with a farm owner or a tenant is not, however, bound by the intentions of the parties, but may judge from their actions and the business setup whether there is a partnership. Each case must be considered by itself.

An Illinois appellate court held a livestock-share arrangement to be a partnership. In that case, however, there appeared to be an intention to create a partnership. Then, too, the Uniform Partnership Act had not yet been adopted.

If the parties do not wish to create a partnership, they should: (1) draw up a lease which states that no partnership is intended and specifically designates the landlord's share as rent; (2) agree that mutual consent is necessary for major purchases and sales, or specify who shall have authority to handle various kinds of transactions. These arrangements are not absolute insurance that the arrangement will not be considered a partnership, but they will add weight to the view that it is not.

### Agricultural Liens

A lien is a claim against specific property for the payment of a debt arising out of some service rendered to the property. The Illinois legislature has enacted laws giving people who render certain services a lien against the thing on which the service was rendered, until the charge is paid. If the charge is not paid, the lien may be foreclosed and the property sold to satisfy the debt. A mechanic, for example, has a lien for work

he has done on an automobile or tractor and a lumber dealer for the lumber bought to build a house or a barn.

Because of their nature, some of these liens have been called *agricultural*. In Illinois there are several such liens. Stable owners and those who keep, yard, feed, or pasture domestic animals for others have a lien against the animals for feed and labor. Laborers, including farm hands, have preferred or prior liens for wages in cases in which the employer becomes insolvent. The owners of stallions and jacks registered with the State Department of Agriculture have a lien for the service fee against the mare or jennet and the progeny. To get the benefit of this lien, the owner of the stallion or jack must file a claim for lien (in writing and under oath) with the county recorder within twenty-four months after the service.

When the weed control authority has to go on a man's land and destroy the noxious weeds, the county has a claim against the land for the expense of destroying the weeds. If the owner of the land does not pay the expenses, the county can foreclose the lien and, if necessary, sell the land. Similarly, taxes, drainage assessments, and other public charges against property constitute liens against such property until they are paid.

#### LANDLORD'S LIEN

Most states have a landlord's lien which gives the owner of the land a claim against the crops of his tenant for rent. The present Illinois law concerning a landlord's lien provides that:

Every landlord shall have a lien upon the crops grown or growing upon the demised [rented] premises for the rent thereof, whether the same is payable wholly or in part in money or specific articles of property or products of the premises, or labor, and also for the faithful performance of the terms of the lease. Such lien shall continue for the period of six months after the expiration of the term for which the premises are demised, and may be enforced by distress [holding] as in this Act provided.

As interpreted by the courts, this law has the following meanings:

1. The landlord's lien applies only to crops grown during any one year for the rent for that year. Fall-seeded crops, such as winter wheat, are exceptions, the court having held that since they grow in two different years they are subject to the rent for those two years.
2. The lien applies only to crops grown on land for which the landlord is entitled to rent.
3. The lien applies only to crops, not to other property of the tenant.
4. Since the lien is not against the tenant, but against the crops, it attaches even though the grain may have been sold; the third party (usually an elevator) is subject to the lien unless it can be shown that the elevator operator had no reason for thinking the grain was grown on rented land. Many landlords furnish lists of their tenants to local elevators simply as a matter of protection.
5. The landlord's lien is superior to chattel mortgages (security interests) or other claims against the crops.

### THRESHING, BALING, AND SHELLING LIEN

Under an Illinois law the owners of threshing machines, clover hullers, corn shellers, and hay balers have a lien against the crop threshed, hulled, shelled, or baled. The lien attaches when the service is rendered and lasts for eight months. It is security either for the contract price of the job, or if no agreement was made, for a reasonable price.

These are the important facts concerning this lien:

1. It is good for eight months even though the owner of the grain, hay, or clover seed retains full possession and control over it.

2. It is not valid against a purchaser unless the lien holder gives the buyer written notice of his lien before the buyer has made a final settlement with the seller.

3. There are no Illinois decisions on the application of this law. Lien laws, however, are strictly construed. If the Illinois courts adopt a strict interpretation, it is doubtful if the owners of mechanical corn pickers are entitled to a lien for custom work. It is also true that combine and pick-up balers were not in existence when the law was passed. The present language of the act, however, is such that the courts would be likely to consider that the owners of such machines were entitled to liens. Whether the courts will so hold is still problematical.

4. To enforce this lien, the holder must give the owner 10 days' written notice that he intends to sell the property at a stated time and place. If the owner does not settle with the lien holder, the property may be sold and the lien satisfied. Any returns that remain after the lien is satisfied go to the owner.

### MECHANIC'S LIEN

Under Illinois law, builders, contractors, laborers, and materialmen have a claim for services performed or materials supplied, both against the buildings and against the owner's interest in any land connected with the buildings.

The lien attaches to the property on the date of the contract for service or materials. The basis of the lien is the existence of a contract. The contract, however, does not have to be in writing. To be effective against other creditors, a mechanic's lien must be either foreclosed or filed with the clerk of the circuit court within four months after the contract is completed. Lumber dealers, materialmen, architects, carpenters, painters, and contractors and their laborers are also entitled to the lien.

The law generally applies to buildings and permanent fixtures. Putting on roofing and porches, adding rooms, installing baths and like improvements and repairs entitle the materialmen and contractors to a lien. The Illinois courts have held, however, that building fences, furnishing fence posts, and moving buildings do not constitute the kind of service and material intended in the act and that the lien does not apply in these instances.

Any property against which a mechanic's lien has been foreclosed may be redeemed by paying for the services or materials for which the lien exists plus the costs and interest.

It is important that a farm buyer find out if any unsettled mechanic's liens exist against the house, barn, or other farm buildings. If such claims exist, and if the seller does not pay them, the buyer will either have to pay them or suffer a foreclosure against his property.

A mechanic's lien usually is against real property. It should not be confused with a lien granted garagemen and others for labor on or storage of chattels.

#### STORAGE AND REPAIR LIEN

Concerning storage and repair liens, the Illinois statutes make this provision:

... every person, firm, or corporation who has expended labor, skill, or materials upon any chattel, or has furnished storage for said chattel, at the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor thereof, shall have a lien upon such chattel beginning on the date of the commencement of such expenditure of labor, skill and materials or of such storage for the contract price for all such expenditure of labor, skill or materials, or for all such storage, or in the absence of such contract price, for the reasonable worth of such expenditure of labor, skill, and materials, or of such storage, for a period of one year from and after the completion of such expenditure of labor, skill or materials, or of such storage, notwithstanding the fact that the possession of such chattel has been surrendered to the owner, or lawful possessor thereof.

Garagemen and automobile mechanics form the largest class of persons benefiting from this law. A farmer who has had work done on his automobile or tractor subjects it to the lien.

After a chattel has been returned to the owner, the lien lasts for only 60 days, unless within the 60 days the lien claimant files a notice of claim with the county recorder.

#### AGISTER'S LIEN

English law very early recognized that those who pasture or feed the livestock of others have a right to keep such livestock until they have been paid for the pasture or feed. The person entitled to such a lien is called an *agister*. An Illinois law provides that "agisters and persons keeping, yarding, feeding, or pasturing domestic animals, shall have a lien upon the animals agisted [pastured], kept, yarded, or fed, for the proper charges due for the agisting, keeping, yarding, or feeding." The Illinois courts, interpreting this law, have established three important facts:

1. To be entitled to an agister's lien, the person claiming it must have the animals in his charge and under his control. An elevator company or feed company is not entitled to a lien simply because it supplies feed to another on credit.

2. There must be at least an implied agreement for the pasturing, feeding, or care before the lien can attach. One who wrongfully keeps the livestock of another is not entitled to a lien.

3. An agister's lien does not take precedence over a chattel mortgage unless the chattel mortgagee (one who lent money) consents to an arrangement whereby persons other than the mortgagor feed and care for the animals. A mortgage executed, however, while the animals were under agistment would be subject to the lien.

To enforce this lien, the one entitled to it, while still in possession of the animals and after requesting reasonable or agreed compensation from the owner, may give 10 days' written notice to the owner, stating the time and place at which the property will be sold. After due publication of notice, as required by law, the animals may be sold and the amount claimed for feed, keep, or pasture recovered, together with the costs of the proceeding. The remainder, if there is any, is paid to the owner.

## Contracts and Warranties

### CONTRACTS<sup>1</sup>

**What a contract is.** Simply defined, a contract is "an agreement, upon sufficient consideration, to do or not to do a particular thing." Thus there are two absolutely necessary elements: agreement between the parties and adequate consideration.

*Agreement between the parties.* There must be a mutual understanding or a "meeting of the minds" before a contract can exist. If the parties are mistaken as to what was intended, there is no contract. Such agreement is usually reached through a process of offer and acceptance, often-times including counteroffers and much altering of conditions before an agreement is finally reached. Questions which concern delivery, quantity, weight, price, quality, payment, or any other things that may affect the agreement should be settled.

*Adequate consideration.* To be enforceable, a contract must provide that the parties exchange something of value. The thing of value may consist of money, labor, goods, or a promise to do or not to do some specific thing. A contract may come into existence when each party has promised something of value to the other, or when one party actually performs his part of the agreement in return for a promise from the other.

**A valid contract is enforceable at law.** If one party fails to carry out its terms, the other may sue for damages or, in some instances, he may force the party who is not carrying out the terms to perform them. Forcing the performance of the terms is called specific performance.

**Some contracts must be in writing.** Most contracts which a farmer makes need not be in writing to be enforceable, but there are important exceptions: (1) transfers of real estate must be in writing; (2) a contract

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<sup>1</sup> For discussion of wage contracts, see pages 34-35.

that is not to be performed within one year after it is made must be in writing and signed; (3) a contract to sell goods valued at \$500 or more or a sale of such goods is enforceable only to the extent the buyer has accepted the goods, or for that part of the goods the buyer has paid for, or if the contract is in writing and signed.

**Contractual rights of a wife.** By common law, when a man and woman married, they became as one. The "one" was the husband. He controlled his wife's person and property rights, was entitled to money she earned from outside employment, and represented her in suits and actions at law.

In Illinois and in other states, these common-law principles have been replaced by statutes giving women equal property rights with men. Illinois law gives married women the following rights: to own, purchase, sell, mortgage, or otherwise deal with her own personal and real property; to sue and to be sued without joining her husband with her; to defend in her own right if she and her husband are sued together; if she is deserted by her husband, she can prosecute or defend in his name any actions he might have prosecuted or defended; to be immune from her husband's creditors except in so far as his obligations are for family expenses and the education of their children; to enter into contracts; to "receive, use, and possess his own earnings, and sue for them in her own name, free from the interference of her husband or his creditors."

The law, however, does limit the right of husband and wife to contract with each other by providing that "neither husband nor wife shall be entitled to recover any compensation for any labor performed or services rendered for the other, whether in the management of property or otherwise." Interpreting this portion of the law, the courts have held that a wife is not entitled to compensation for nursing her husband during illness, nor is the husband entitled to compensation for laboring on his wife's farm.

## WARRANTIES

A product sold by a merchant or dealer is accompanied by an implied warranty that it will do the thing it is supposed to do, or is fit for the use it is intended for. This is an established principle of law. Therefore if you buy a hayrake and find that you cannot use it because it has a mechanical defect, you can return the rake and get your money back. As a matter of business practice, sellers oftentimes "make the buyer whole" by replacing defective parts or by allowing him credit for further purchases.

Two important kinds of warranties — express and implied — accompany the sale of personal property (chattels). An *express* warranty results from plain statements the seller makes about the goods. An *implied* warranty results as a matter of law from the nature of the transaction and of the subject matter. When you buy a brooder stove, there is an implied warranty that it will burn satisfactorily and create enough heat for the amount of space that such stoves normally heat. There is no warranty that it will do something which such stoves do not ordinarily do unless the seller expressly so warrants.

A merchant or dealer, trying to make a sale, often makes representations which, while not true, are not stated expressly enough to constitute a warranty. His representations, called "puffing," do not become a part of the contract of sale. *Express* warranties are not often made. *Implied* warranties, however, accompany nearly everything a farmer buys or sells and are therefore more significant.

The following implied warranties are especially important to farmers: that livestock feed is fit for farm animals to eat; that if planted under normal conditions, seed will grow; that farm implements will perform satisfactorily the operations for which they are designed; that serum and virus are effective for the use for which they were made.

**Consumer fraud act.** This act makes it unlawful to use deception, fraud, false pretense, false promise, or to omit, conceal or suppress any material fact with the intent that others rely on such concealment, omission, or suppression in connection with the sale or advertisement of any merchandise. The Attorney General of Illinois is charged with the responsibility of administering the act. He may have any person who has engaged or is about to engage in such acts enjoined from doing so. The court may also make such orders or judgments as are necessary to restore to any person money or property which has been acquired by him by means of any practice declared unlawful by this act. An amendment to the Illinois Business Corporation Act provides that domestic corporations who have willfully and substantially violated the provisions of this act may be dissolved involuntarily by a court decree based on a complaint filed by the Attorney General. Further, any out-of-state corporation that willfully and substantially violates the provisions of the act may have its license to do business in Illinois revoked.

## Farm Labor

### FARM WAGE CONTRACTS

The thoroughness with which farm employers and farm laborers discuss the terms of employment varies considerably. From a legal standpoint such agreements have at least two important characteristics: (1) nearly all of them are oral, and (2) most of them do not specify the length of time the laborer is to work.

**Term of employment is important.** If a wage contract specifies an indefinite term of employment or a term that will end within a year from the time the contract is made, the contract is valid whether it is in writing or not. But if the term of employment agreed upon is for a year or more, the agreement to be enforceable must be in writing and signed by the employer and employee.

The Illinois courts have held that when a man is employed for an indefinite time, the agreement constitutes a *hiring at will*. In controversies, facts may be introduced to show that he is employed by the day or by the

month. Illinois decisions nevertheless indicate that he is hired at will and that he may quit or be discharged at any time without incurring any liability or acquiring any rights because of the quitting or the discharge.

The application of this rule has sometimes been unjust to married farm laborers, because it has forced them to move out of their homes without sufficient notice. A simple written wage contract that states the length of time for which a man is hired and that provides that notice to quit be given a definite time in advance of the end of the contract would give a married farm laborer the protection he needs. When, however, a definite term has thus been agreed upon in writing, it is binding upon both employer and employee.

**Wage rate.** When a farm laborer is employed at no specific wage, the prevailing rate in the community for the kind of work he does will apply. Sometimes, however, the employee agrees to let the employer pay what he thinks the services are worth. Courts have generally held that such an agreement is invalid because the amount to be paid is not definite. The laborer would be entitled, however, to a reasonable wage for labor actually performed — not less than the minimum wage, if applicable.

**Other forms of payment.** Questions about garden space, meat, milk, bonuses, and other forms of payment should be well settled between the parties. Agreements concerning room, board, laundry, chores, and Sunday work should be made with single men.

#### MINIMUM WAGES

**Federal minimum wage law.** The minimum wage law includes some workers in agriculture. "Agriculture" is broadly defined in the law as "farming in all its branches, including the raising of livestock." Lumbering operations are also included as is the delivery of goods to market when done by a farmer or in connection with a farm operation.

The law provides that \$1.30 per hour shall be the minimum wage for covered agricultural workers. This amount includes the reasonable cost of furnishing the employee with room, board, and other facilities if they are customarily furnished by the employer.

**Farms covered.** The exemptions are so broad that only a small percent of farmers will be covered. Even those who are subject to the minimum wage are not required to pay time and a half for overtime. The minimum wage will not apply in the following instances:

1. If the employer did not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year. A "man-day" is "any day during which an employee performs agricultural labor for one hour or more." Five hundred man-days are equivalent to seven full-time workers during the quarter. Work done by members of the employer's immediate family or certain workers in a hand-harvest operation is not included in computing the 500 man-days.

2. If the employee is a parent, spouse, child, or another member of the employer's immediate family.

*Violations.* If employers who are subject to the law intentionally fail to pay the minimum wage, the penalty can be severe. A federal injunction may prohibit future violation on penalty of contempt of court proceedings with possible fines and imprisonment. The employee may also sue for damages. If he is successful, the employer will have to pay costs of the suit. The act also provides for criminal penalties that can result in fines or imprisonment.

Record-keeping requirements are involved in the law, but not all employers are required to keep records. Only those employers who are likely to utilize more than 500 man-days of agricultural labor will have to record each employee's name and address and a count of man-days of labor.

*Records required.* Employers who used more than 500 man-days of agricultural labor in any calendar quarter of the preceding year will have to record the following information for each employee to whom the minimum wage provisions apply:

1. The hours worked each day and each week.
2. The wages paid.
3. Additions to or deduction from wages.

No special form is required for these records as long as they contain the necessary information.

**Illinois minimum wage law.** Illinois farmers are included under minimum wage requirements if they employ more than 500 man-days of agricultural labor during any calendar quarter of the preceding year. The minimum wage scale for those under 19 years of age is \$1.25 per hour; for those 19 and over, the rate is \$1.60 per hour.

Exempted from this provision are farmers who employ fewer than 500 man-days of agricultural labor in a calendar quarter, or whose employee is the parent, spouse, or member of the immediate family. Also exempted is the employer of an employee who: (1) commutes daily to the farm from his permanent residence, (2) is paid on a piece-rate basis in an operation in which it is customary to do so, and (3) has been employed in agriculture for less than 13 weeks in the preceding year.

#### CHILD LABOR

Federal law provides that children under 16 may not be employed to perform hazardous activities. The Secretary of Labor has declared such activities as the following to be hazardous for youth under 16: handling or applying anhydrous ammonia or certain herbicides or pesticides; driving a truck on a public road; handling or using blasting agents; operating or riding a tractor of more than 20 p.t.o. (power take-off) horsepower, a self-unloading wagon, a fork lift, or a nonwalking-type rotary tiller; oper-

ating a power-driven combine, baler, cornpicker, chopper, forage harvester, silo filler, crop dryer, post-hole digger, or power saw; and working on a ladder or scaffold over 20 feet high, inside a silo when a top unloading device is in position, or in a pen or stall occupied by a bull, boar, or stud horse. An important exception is allowed for a child employed by his parents on a farm owned or operated by his parents.

Youth under 16 may be hired to do such nonhazardous jobs as: picking vegetables, milking cows, loading hay bales on a wagon and unloading them onto a portable elevator, detasseling corn, doing carpentry (with hand saws), maintaining machinery, or handling irrigation pipes. Special learner training programs available in most communities provide additional opportunities for 14- and 15-year-old youth who can successfully complete the requirements. Contact your county extension adviser or a vocational agriculture instructor for information.

Illinois child labor laws are not as stringent as federal laws and generally exempt youth engaged in agricultural work when school is not in session.

#### EMPLOYER'S LIABILITY

Farm owners and operators ask many questions about their liability for injuries to farm laborers or other laborers they employ, particularly as to the liability they may incur under the provisions of the Illinois Workmen's Compensation Act.

**Agricultural exemptions.** The Workmen's Compensation Act is a law making industrial employers generally responsible for injuries occurring to their employees during their hours of employment and laying down certain conditions concerning liability insurance. An agricultural exemption in the act provides that the act shall not apply to any of the following: (1) employers who employ less than 500 man-days of agricultural labor during any calendar quarter during the preceding calendar year; (2) all exchange and family help who are not migrant workers; and (3) employers of laborers employed as hand harvest laborers paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and where the laborer commutes daily from his permanent residence to the farm on which he is employed and has been employed in agriculture less than 13 weeks during the preceding calendar year.

To be exempt from the Workmen's Compensation Law, the work performed must, in addition to these specific provisions, be a part of the farming operation. The courts have not had an easy time deciding what work is part of the farming operation and what is not. The courts have held that persons employed to haul fertilizer to a farm, to till farmlands, and to hull clover were engaged in farm work and their employers, there-

fore, were not subject to the provisions of the Workmen's Compensation Act.

The line of demarcation, however, between what is in its nature a part of farming and what is not has by no means been settled. The court has held that a farmer operating a sawmill on his farm *was subject to the act* where the sawmill employees were concerned, since in operating a sawmill he was engaged in an occupation other than farming. In another case a farmer who employed a carpenter to build a corncrib was held *exempt from the act*. The court here held that the man was still a farmer, not a building contractor. This decision lends weight to the view that so long as a farmer does not himself engage in other occupations, but only hires his building, ditching, painting, or other services done, he will not come under provisions of the act. This view is backed up by the last clause of the act, "... no matter what kind of work or service is being done or rendered."

A farmer should, however, for his own protection, make certain that independent contractors who employ laborers, such as carpenters and painters, are covered by liability insurance.

**Common law liability.** Under certain conditions a farmer may, however, be liable for injury to his farm hands or to others, even though he does not come under the provisions of the Workmen's Compensation Act. If it can be shown that the injured party is not barred from recovering damages by what the law has designated as contributory negligence (negligence on the part of the injured party), or by his assumption of risk, or by facts that show that the injury was due to the negligence of fellow workers, but that the injury was due to negligence on the farmer's part, the farmer is liable for damages.

The real purpose of the Illinois Workmen's Compensation Act is to remove such defenses as contributory negligence, assumption of risk, and injury by fellow workers and make it easier for a workman to recover damages. An employer not under the act may still be liable for injury to his employees, but he is not so likely to be because the defenses named above can then be used. In any case, it is wise for an employer to maintain liability insurance.

**Other exemptions.** The provisions of some of the principal Illinois labor acts specifically exclude farm labor. An act which makes *eight hours a legal day's work* specifically excludes farm labor; the Illinois Health and Safety Act and the Workmen's Occupational Diseases Act both specifically exclude farm labor in the language used in the Workmen's Compensation Act; and the Unemployment Compensation Act provides that "the term employment shall not include agricultural labor; domestic service in a private home . . . service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother . . ."

## Drainage and Water Rights

### FARM DRAINAGE

Certain common-law principles concerning the drainage of land were early established by Illinois courts. One of these principles is that when one tract of land is naturally so situated that it drains across a lower adjoining piece of land through natural depressions, its owner is entitled to this drainage and the owner of the land below cannot lawfully prevent the natural flow of water.

This common-law principle, however, did not meet the needs of a growing agriculture. So the courts evolved a broader rule, which considerably increased the number of farms that could legally secure adequate drainage; the rule is this:

*An owner whose land is so situated that it naturally drains across a lower adjoining piece of land through natural depressions may increase the amount of flowage from his land by artificial ditches constructed on his own land, provided that the artificial ditches drain only the natural basin from which water could have flowed onto the lower land and discharge the water onto the lower land at the natural discharge point. Also, in improving the drainage on his own land, an owner cannot cause water to back up onto higher land.*

### DRAINAGE DISTRICTS

Much of the land in Illinois is too flat to drain well naturally. In the central part of the state the prairie could not be farmed until the land had been tiled and ditched. To put in enough tile and ditches to handle the water meant crossing the land of many owners. The construction of drainage works that cross property lines was simplified when the legislature passed two acts on drainage, the Levee Act and the Farm Drainage Act. These acts have since been combined into a single act, the Illinois Drainage Code.<sup>1</sup>

Drainage districts are formed on the petition of either a *majority* of the adult landowners who own one-third of the land in the area to be drained, or on the petition of *one-third* of the adult landowners who own more than *one-half* of the land to be drained. This type of organization makes it possible to include in the district lands belonging to an unwilling minority. It is the only feasible type of district organization for drainage work on a large scale.

Petitions are directed to the circuit court. If the court approves a petition, it notifies the highest executive officer in a home-rule county or the county board in a non-home-rule county. Commissioners for multi-county districts are appointed by the members of the General Assembly whose legislative districts include any part of the drainage district. The commissioners make surveys and file a report with the circuit court com-

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<sup>1</sup> This 1955 law is found in Ill. Rev. Stat., ch. 42, secs. 1-1 to 12-24 (1971).

paring the cost and benefits of drainage. The court sets a hearing date and any interested person may appear at the hearing and file his objection.

Other methods of organization are provided in the law. Since the organization of drainage districts is a very exacting process, it should be handled by persons familiar with the law and its operations. Assessments made for the operation of drainage districts are, like taxes, liens against the lands benefited.<sup>1</sup>

#### LIMITS TO THE RIGHT TO BUILD DAMS

In Illinois the common law on damming or impounding (collecting and holding) water is that anyone who dams up or impounds water does so at his own risk. If his action subsequently causes damage to others, he will be liable for such damage. The rule holds whether he dams stream water or surface water.

A stream-bank owner has the right to dam a stream or make other uses of it so long as he does not unreasonably interfere with the lawful use of the water by downstream owners, divert the course of the stream around downstream owners, or cause water to back up on lands above his.

A landowner may dam, divert, or store surface waters or the water of irregular streams for water conservation and use, or soil conservation and improvement, so long as he does not violate any of the common-law rules of drainage. Certain laws apply generally to the construction of dams; they contain the following provisions:

1. Under the Soil and Water Conservation District Law, directors of districts may, by enacting land-use regulations, make landowners carry out certain engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, and ditches.

2. The Illinois Drainage Code provides for and regulates the construction of levees or embankments by providing for the formation of drainage and levee districts.

3. A dam or other obstruction cannot be put in a navigable stream without the approval of the state. However, in an Illinois case which went to the United States Supreme Court, the Court held that the construction of a dam in a navigable stream was not objectionable if as a matter of fact the stream was not used for navigation.

4. Waters within or bordering on a city or village are under the jurisdiction of the municipal government and this jurisdiction extends three miles beyond the city limits. The municipal government may change a watercourse, construct dams, or perform other acts necessary for the welfare of the inhabitants.

5. A county may remove driftwood and other obstructions from natural watercourses. The law does not specifically give a county authority to dam streams but, if circumstances warrant, the authority might be inferred.

6. Owners of dams must provide fishways.

<sup>1</sup> For more information about drainage districts, see Illinois Extension Circular 751, "Illinois Farm Drainage Law."

## Fences

### WHAT ARE LEGAL FENCES?

According to the provision of the state law, *a legal fence is a 4½-foot enclosure in good repair that will keep livestock off adjoining land and highways.*

It may be constructed of rails, timber boards, stone, hedge, barb-wire, woven wire, or whatever the fence viewers of the township or precinct consider the equivalent. A second provision, however, gives the voters at the annual township meeting the right to determine what shall constitute a legal fence in their township; and in counties not under township organization the county board shall have the right to regulate the height of fences.

The laws regarding legal fences apply only to fences which keep livestock off adjoining lands or highways.

### ELECTRIC FENCES

Whether an electric fence can be considered a legal fence depends upon those portions of Illinois law which give discretion to fence viewers, township voters, and, in counties not under township organization, to county boards. But whether electric fences are legal, either by interpretation or amendment, should be decided wholly by the answer to the question: Can they safely keep livestock from trespassing?

Electric fences, however, are used largely as movable fences within the farm itself. Therefore, whether they constitute a legal means of withholding livestock may not be so important as whether the owner of an electric fence can be held liable for the death or injury of persons or of animals belonging to others. When injury to others is clearly caused by the owner's negligence (that is, when he has failed to see to it that his fence is properly constructed and installed) and when the injured parties themselves are not at fault, it is probable that the owner can be held liable for damages.

### RESPONSIBILITY FOR DIVISION FENCES

Illinois law provides that when the lands of two or more owners adjoin, each owner is responsible for making and maintaining a just proportion of the division fence. Each owner ordinarily assumes responsibility for a designated portion of the fence, usually one-half and usually the half on his right as he faces the division line from his own property. Such division is custom, however, not law.

When owners cannot agree on the portion of the fence each should maintain, any two fence viewers can mark and define the portion to be built and maintained by each. In counties organized by townships, the board of auditors serves as fence viewers. In counties not under township organization, fence viewers are appointed by the county board.

When a person who has allowed his land to remain unfenced afterward fences it, using the fence of another, he must pay the owner of the

fence his just share of the value of the fence as it stands. If they cannot agree on the value of the fence or the share which each owner should bear, they may call in the fence viewers, or the wronged person may bring action before any court of competent jurisdiction.

An action may be taken to compel a negligent adjoining owner to build or repair his share of a division fence. When repair is urgent, one owner may give the other ten days' written notice that repairs are necessary. If the repairs are not made within the ten days, the complaining owner may do the work himself and recover from the other the expense of repairing the fence and other costs incurred.

Many Illinois farmers keep no livestock and feel therefore that any fencing between their own and adjoining property should be maintained by the owner of the adjoining land. The Illinois law, however, does not relieve them of responsibility. It provides that "when any person wishes to inclose his land, located *in any county having less than 1,000,000 population according to the last preceding federal census and not within the corporate limits of any municipality in such county*, each owner of land adjoining his land shall build, or pay for the building of, a just proportion of the division fence between his land and that of the adjoining owner and each owner shall bear the same proportion of the costs of keeping that fence maintained and in good repair."

Apparently there is a conflict between the requirement as expressed in this section of the law and that contained in another section which provides that one may, after giving notice, discontinue his division fence responsibility if he thereafter "... suffers his land to be uncultivated and not used for pasture purposes...." The section quoted above imposes the responsibility regardless of one's use of his land. It depends instead on whether or not adjoining owners have enclosed their land.

The courts have held that an owner's obligation starts at the time the fence becomes a division fence. If, for example, an owner sells a part of his farm, he and the purchaser must share responsibility for the division fence from the date of sale. It should be understood, however, that owners whose properties adjoin are not compelled by law to build a particular kind of division fence, or any fence at all, if they can agree.

School districts in Illinois bear the full responsibility for all division fences between school grounds and adjoining lands, and are required to keep such fences and maintain them in good repair. Although the kind of fence that must be maintained is not prescribed, it can be assumed that the fence should be a legal one as described in the fence law — one capable of turning hogs, sheep, cattle, and horses.

Churches, cemeteries, park districts, and other agencies, either public or private, are apparently in the same position as other land owners with respect to division fences. However, if such an agency wanted a fence that would exceed the legal requirements, it should bear the extra cost of building and maintaining such a fence. The law charges state parks with

the duty to share in division fences between them and land used for farming purposes. Presumably this excuses state parks from division fence responsibility if the adjoining land is not used for farming purposes.

Except for interstate highways, highway authorities are not required to fence the road right of way.

#### TRIMMING HEDGE DIVISION FENCES

To protect the land against injury from overhanging hedge trees, Illinois law provides that the owner of a hedge division fence must trim it to 4 feet in its eighth year. At least once every two years thereafter, he must cut it back or trim it to a height of not over 5 feet. The provisions of the act do not apply, however, to any hedge fence (not over 60 rods long) that protects an orchard or buildings or otherwise acts as a windbreak.

If an owner fails to cut his hedge, the owner of the adjoining land whose soil it injures may, if his own hedge is properly thinned, cut the hedge and recover the cost from the negligent owner.

All hedge along a highway must be trimmed annually to a height of 5 feet. Osage hedge, however, must be trimmed to 4 feet. Trimming is to be done before October 1. The landowner may obtain a permit to grow hedge to any desired height for not more than one-fourth of the frontage along the highway to serve as a windbreak.

The law on hedge fence applies only to division fences and fences along highways. A farmer can have all the hedge fence he wants, so long as it does not overhang or adjoin his neighbor's land.

### Livestock, Dogs, Vicious and Wild Animals

#### DAMAGE BY TRESPASSING LIVESTOCK

One law provides that if domestic animals break through a good fence into another's property, their owner is liable for all damages they may do. This law also provides that the owner of animals running at large contrary to law is liable for damages whether the property they damage is fenced or not.

This law further provides that trespassing animals may be taken up and retained until their owner makes good the damage done. The person taking them up, however, must notify the owner within 24 hours, or if the owner is unknown, he must post notices at some public place near the premises. The Illinois courts interpreting this law have laid down the following principles:

1. A may recover damages from B, who owns the adjoining land, if B's livestock break through B's part of the division fence, even though A's part of the division is defective.

2. If B's livestock break through A's part of a division fence, to recover damages A must show he was not negligent in keeping his part of the fence repaired. Unless he can prove that he was not negligent, A cannot even hold the trespassing animals.

Another Illinois law prohibits the owners of domestic animals from permitting the animals to run at large. If an owner does not use reasonable care in restraining his animals and allows them to roam the countryside, he will be liable in damages to anyone injured, fence or no fence. The law also provides for a pound where animals that are permitted to run at large may be retained and, if not claimed, sold by the poundmaster.

**Trespassing bulls.** A trespassing bull may do considerable damage, particularly if it serves cows that belong to someone else. If the bull is an inferior animal or if it is of a breed or type different from that of the cows it serves, the owner whose cows have accidentally been bred to it may suffer considerable loss. Whether the owner of the cows can recover damages depends upon the facts in each case. The principles on which the courts have acted are as follows:

1. An owner who knows that his bull is in the habit of breaking out will, in nearly all cases, be liable for the animal's trespass. Maintaining good division fences is not a sufficient exercise of care to avoid his liability for damages. His only insurance against liability may be a strong bull pen. Most courts would consider that service to cows was an aggravation of the trespass and would allow damages.

2. When an owner has no knowledge that his bull has ever broken out, and when he has not been negligent in maintaining his part of a division fence, the Illinois courts have held that he is nevertheless liable for damages if the animal breaks through his part of the fence. He is liable, too, if the bull gets on other people's property through anything except a division fence, regardless of the condition of the fence.

3. When the bull gets through the part of the division fence belonging to the owner of the adjoining land, and when the fence is not in good repair or reasonably strong at the point where the bull breaks through, the owner of the bull cannot be held liable.

Thus the probability that the owner of a trespassing bull will be held liable for damages is quite high. The owner of a bull will therefore find it best to do whatever is necessary to prevent the animal from trespassing. The promptness with which the owner of a trespassing bull goes after it may affect the extent of the owner's liability.

#### RIGHT TO STRAY ANIMALS

*Estray* is the legal term for a domestic animal of unknown ownership, running at large. The law does not apply to dogs, cats, and poultry.

A householder may take up a stray animal found on or about his premises. But within five days he must post notices of his possession in at least three public places in the township. He may then use the animal for his own benefit.

A stray animal, except a cow in lactation, must not be used until notice has been posted. The notice must describe the animal and state

before what judge and at what time (not less than 10 nor more than 15 days from the posting of the notice) the taker-up will apply for appraisal of the animal. If the owner appears and claims the animal, the taker-up is entitled to payment for keeping, feeding, and advertising. If the stray animal dies or gets away, the taker-up is not responsible.

If the owner of a horse, mule, or ass, or a head of cattle that is an estray does not appear within a year, claim the animal, and pay for the charges and expenses, the animal becomes the property of the taker-up. However, the taker-up must notify the judge who heard the appraisal proceedings that one year has elapsed and the owner has not appeared. If the animal was appraised at over \$25, the county clerk is also entitled to this notice. If the owner of a hog, sheep, or goat does not appear within three months, claim the animal, and pay the charges and expenses, the animal will likewise become the property of the taker-up.

#### RESPONSIBILITY FOR ANIMALS ON HIGHWAYS

When a person who runs into an animal on the highway is injured or damages his vehicle, he often attempts to hold the owner of the animal liable. What damages, if any, he can collect in a particular instance cannot be predicted with accuracy. These general rules, however, apply:

1. A farmer who is *negligent in maintaining his fences* and who allows his animals to roam the highway can be held liable for damage that the animals cause those who use the road.
2. A farmer who keeps his fences in good repair but who has animals that *he knows habitually break out* may be held liable for damage that these animals cause those using the road.
3. A farmer who keeps his fences in good repair and whose animals do not habitually break through the fence and onto the highway can be held liable for damage if he *knew an animal was out* and on the highway and made no reasonable effort to get it in or if he was negligent in any other way.
4. A farmer who drives animals *along or across the highway*, particularly a paved highway, can be held liable for damage that the animals cause if he can be proved negligent. To avoid being held negligent, he must use whatever care is necessary to keep the animals under control. If animals are being driven at night or when the visibility is poor, it will require more care to warn motorists properly and to keep the animals under control. The amount and nature of the traffic will also affect the care which the owner will need to take. When the road is jammed with traffic, it may be negligent to try to drive a herd of cattle across it no matter how much caution is exercised.

Illinois law is not clear concerning a farmer's liability when he is not negligent in any way. It would seem reasonable for the courts to hold that where there is no negligence there is no liability.

### SHEEP-KILLING DOGS AND BITING DOGS

**Sheep-killing dogs.** In many Illinois communities the large numbers of stray dogs that roam the countryside and molest flocks virtually prevent sheep raising. Sometimes it is not a stray but the neighbor's dog that is responsible for the damage. In either case flock owners often turn to the law and its enforcing authorities for help.

There are six distinct forms of legal protection against dogs. First is the license requirement. Dogs are licensed both to make dog owners more responsible for the dogs they keep and to build up a county indemnity fund for flock owners who suffer loss because of dogs. This fund may also be used to compensate for losses of other domestic animals. The indemnity for sheep is the fair market value of each injured or killed animal. To secure the indemnity, an owner must present his claim to a member of the county board within 40 days after the animal dies.

Another law allows the owner of domestic animals to kill dogs not accompanied by their owners when the dogs are discovered in the act of chasing, wounding, or killing domestic animals.

An owner of sheep may put out poison for sheep-killing dogs on his own premises if he does so with reasonable care and with good intentions.

Dogs or domestic animals that carry diseases transmissible to humans may be poisoned with consent of the owner and with a written permit from the Illinois Department of Agriculture. Any other poisoning of dogs or domestic animals except sheep-killing dogs is illegal.

The county board of each county may regulate and prohibit the running at large of dogs in unincorporated areas that have been subdivided for residence purposes.

The owner of animals injured or killed by dogs also has a right of action against the dog's owner for all damages caused.

Although these measures have done some good, they are not very effective when the number of stray dogs becomes as large as it is in many areas. In such localities either individual cooperation of farmers or rigid measures by local authorities are apparently the only solutions.

**Biting dogs.** The law makes the owner of a dog responsible for any injury the dog does to a person. An act passed in 1949 states, "If a dog, without provocation, attacks or injures any person who is peaceably conducting himself in any place where he may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term 'owner' includes any person harboring or keeping a dog."

When a watchdog is kept within a restricted area and warning signs are posted at entrances to the area, anyone who does not heed the signs cannot ordinarily complain if he is bitten. The common law does not interfere with the keeping and training of watchdogs if the dog is taught to discriminate between social or business callers and trespassers.

### VICIOUS AND WILD ANIMALS

The owner of a bull, horse, boar, rooster, or of any domestic animal capable of inflicting injury and of a known vicious nature is liable for the damage the animal may do. If the animal, however, has never shown any viciousness, the owner is not liable until it does.

Anyone who keeps a wild animal of a recognized dangerous nature — a bear or a lion, for instance — keeps it at his own risk.

### Unlawful to Hamper Travel on Highways

To enable people to travel on public highways safely and without undue annoyance, the Illinois legislature has enacted certain laws. These laws state in considerable detail what people cannot do in, on, or near a highway.

1. Placing loose earth, weeds, sod, or other vegetable matter, or any other material, on a road in such a manner as to interfere with the free flow of water from the dragged portion of the road to the side gutters or ditches is unlawful. (The law does not apply to work done by road officials.)

2. Planting willow trees on the margin of roads is declared a public nuisance.

3. Hedge fences along the line of a public highway must be kept trimmed annually to a height of 5 feet or less. Road commissioners may, however, at their discretion, permit a farmer to keep one-fourth of the total length of hedge along the highway untrimmed, as a windbreak for livestock.

4. Destroying or defacing official guide boards, posts, signs, and notices is punishable by fine.

5. Intentional damage, including damage by unreasonable use, to any highway, bridge, sign, signpost, or other structure, is a misdemeanor.

6. Depositing "weeds, trash, garbage, or other offensive matter or any broken bottles, glass, boards containing projecting nails or any other thing likely to cause punctures" is punishable by fine. Putting broken glass on a highway is a misdemeanor. And going onto highways with cleated implements is unlawful.

7. Allowing grain to spill on a highway is unlawful.

8. Placing obstructions across a road, encroaching on a road with a fence, plowing or digging on a road, turning a current of water on a road so as to cause washing, and leaving hedge cuttings along a road for more than 10 days are acts punishable by fine.

9. It is unlawful for itinerants to hitch or turn loose any stock, cows, horses, or other animals on the highways for the purpose of feeding them; to camp on any public highway for more than 12 hours in any one township or road district; to camp opposite a school, cemetery, or church, or within 100 yards of a residence without the consent of the proper persons.

## Wildlife, Soil and Water Conservation, and Fire Protection Districts

### WILDLIFE DISTRICTS

**Wildlife habitat management areas.** Landowners who want to aid in the conservation of wildlife may cooperate with the Department of Conservation by leasing land for wildlife habitat management areas. Such an area must consist of at least 600 acres of contiguous land and must be leased for five years or more. The Department of Conservation may cooperate with the landowners in improving wildlife cover. At least two-thirds of the area must be open for public hunting during the regular season. No hunting is permitted on the remaining land. The act also provides rules for hunting on the land, removing surplus game, protecting the farm premises from hunters, and supervising the project. The Department may reimburse the farmer at an agreed upon price for any hay or other crops the farmer leaves standing for the benefit of game.

**Controlled shooting areas.** The law permits and regulates hunting clubs. The hunting season for such clubs extends from October 15 to March 15. Among the Department of Conservation's licensing requirements for upland game shooting are the following:

1. The shooting area must be not less than 320 acres nor more than 1,280 acres of contiguous land, and the land must be controlled for five years or more.
2. Every controlled shooting area must release at least 250 bobwhite quail or pheasants each season.
3. All game killed must be banded on the same day with special bands provided by the Department of Conservation.
4. The hunting club must not kill more than 80 percent of the game released, except that a club may kill 100 percent of the Chukar partridges and certain other birds which are not native.

**Rural recreation loans.** Nonprofit organizations interested in wildlife as a source of recreation may be eligible for loans from the U.S. Department of Agriculture. The Secretary of Agriculture is authorized to make loans for land conservation, land utilization, and rural recreation to state and local public agencies and nonprofit organizations.

### SOIL AND WATER CONSERVATION DISTRICTS

The law concerning soil and water conservation districts is administered by the State Department of Agriculture and establishes a procedure whereby landowners can organize a district for the systematic promotion of better land use, soil and water conservation, and prevention of erosion, flood-water, and sediment damage. Establishing a soil and water conservation district affords a legal medium through which other agencies, particularly the Soil Conservation Service of the U.S. Department of Agriculture, can work directly with farmers. Illinois is now completely organized into districts corresponding to county boundaries.

A district may initiate surveys and research to develop natural resource projects and is required to provide available natural resource information to county or municipal agencies for planning purposes. Any person requesting a zoning variance in the district may have the district issue an opinion as to the effect of the variance and submit the opinion to the county or municipal zoning agency.

Copies of the Soil and Water Conservation Districts Law may be had from the Director of the State Department of Agriculture, Springfield, Illinois 62706.

**Duties and powers of directors.** A district is governed by a board of five directors, elected from among the landowners and occupiers within it. Elections are required to be held each year on or before March 1; two directors are elected in odd years, three in even years.

Directors can, however, be nominated and elected at a yearly meeting on or before March 1 if the State Department of Agriculture approves a petition requesting authority so to elect.

The directors, on behalf of the district, may enter into agreements with federal, state, or other agencies. Under the agreements, soil and water conservation surveys and land-use recommendations will be made; detailed plans may also be worked out with those owners in the district who wish to cooperate. The law provides that, if and when the directors believe that some control of land use is necessary, land-use regulations may be formulated and submitted to a vote. The regulations become effective if favored by three-fourths of the landowners voting in the referendum. The directors have no power to levy taxes or assessments.

**Soil and water conservation subdistricts.** In order to take advantage of federal aid for watershed protection and flood prevention, Illinois adopted a law in 1955 that allows districts to form subdistricts within watershed areas. The subdistricts have the power to levy a tax at a maximum rate of 12½ cents per \$100 valuation. If additional revenue is needed, the subdistrict board may raise funds by levying special assessments, using the procedure in use in the local improvements act. This money may be spent to develop and execute plans and programs relating to any phase of flood prevention or flood control, and to prevent or reduce damage from erosion, flood waters, and sediment. Federal funds are available to the subdistrict on a matching basis (over half of the costs are expected to be paid from local funds) if the subdistrict meets certain requirements, for example: (1) making the land available and (2) obtaining from landowners of half of the land an agreement to carry out a soil conservation program.

A subdistrict is governed by the directors of the soil and water conservation district, unless the subdistrict lies in more than one soil and water conservation district. In that case, each district is represented. If less than five districts are involved, the boards meet jointly and select five directors from among themselves, provided that each board is represented by one director on the subdistrict board.

To form a subdistrict, these steps are necessary:

1. A petition must be signed by a majority of the landowners who own a majority of the land, then filed with the district directors.
2. Within 30 days after receiving the petition, the directors must hold a hearing at which land may be added or excluded.
3. The directors must give notice and hold an election in the proposed subdistrict within 30 days after the hearing.
4. If approved by majority vote, the directors must file a certificate of organization with the county clerk and the Illinois Department of Agriculture.

#### FIRE PROTECTION DISTRICTS

**Organizing a district.** An Illinois fire protection districts law provides that 50 or more legal voters living within the limits of a proposed district (or a majority if there are fewer than 100 voters in the proposed district) may petition the county court to have the question of the organization of a fire protection district submitted to a referendum vote. The court must call a hearing at which those interested may appear and express their opinions. Then a referendum is held. If the majority of the votes cast are favorable, the district is organized. Additional lands may be annexed by subsequent proceedings.

Disconnecting territory from a district is possible if there is no bonded indebtedness and if the territory would receive greater fire protection benefits from another district or a city or village. The assessed value of the remaining district, however, must be sufficient to provide adequate fire protection. Disconnection must not leave the territory remaining in the district noncontiguous.

Under certain circumstances, territory may be disconnected from a fire protection district to add to another district or to create a new fire protection district.

**Duties and powers of trustees.** After the district is organized, the circuit court appoints three trustees who administer the affairs of the district. The trustees may formulate and publish ordinances to cut down the number of fire hazards in the district, employ a fire-fighting force, and purchase fire-fighting equipment. The trustees may raise money by taxation and by issuing bonds. The power to tax is currently limited to 30 cents per \$100 of assessed, equalized valuation of property in the district. A special election must be held if the tax levy is sought to be raised above 30 cents.

## **Part | Regulatory Two | Laws**

**T**HE LAWS discussed in this Part are called regulatory laws; that is, they require farmers and others engaged in particular kinds of enterprises to meet specific standards or to follow definite procedures. They are usually designed to protect the public. They often provide for inspection. Some state agency, frequently the State Department of Agriculture, is responsible for making the inspections and for enforcing the laws.

### **Sale of Feeds, Fertilizers, and Seeds**

#### **COMMERCIAL FEEDS**

Illinois farmers every year buy several million dollars' worth of commercial feed for livestock and poultry. Most of this feed is sold by reputable firms. If the protein it contains is of good quality and costs no more per unit than the protein in such standard supplements as tankage and soybean oilmeal, it will help farmers get economical livestock gains.

Two abuses have arisen in the sale of commercial feeds which have made public protection necessary. The worst abuse occurs when firms or individuals intentionally misrepresent the composition and feeding value of their feeds in order to sell them for more than they are worth. The second abuse occurs when firms or individuals are careless about handling and mixing feeds. In either case, the price is too high and the health of the livestock may be endangered.

**Labeling commercial feed.** The Illinois Commercial Feed Act requires every lot of commercial feed distributed within the state to bear a plainly printed statement certifying the net weight; the name or brand; the name and address of the manufacturer; the name of each ingredient used; the minimum percent of crude protein, crude fat, phosphorus, and iodine; the maximum percent of crude fiber; and the minimum and maximum percent of calcium and salt. When feeds are distributed in bags or containers,

the label must be attached to the container. When feeds are distributed in bulk, the label must be furnished to the purchaser at the time of delivery.

The legal definition of commercial feeds includes all materials that are distributed for use as feed or for mixing in feed, except unmixed seeds or grain, unground hay and unmixed straw, stover, silage, cobs, husks and hulls, and unmixed chemicals.

**Customer-formula feed.** Customer-formula feed is a mixture of commercial feeds mixed according to the instructions of the final purchaser or contract feeder. At the time a customer-formula feed is delivered, the purchaser must be given an invoice showing the name and address of the mixer, the name and address of the purchaser, the date of sale, the brand name and number of pounds of each commercial feed used, and the number of pounds of any other feed ingredient added.

**Drugs.** The State Department of Agriculture may require that a feed containing dangerous drugs be safe when used according to directions. It may further require that a feed be conspicuously labeled to warn the feeder and that the label state the percentage of the drug in a prominent place.

**Adulteration.** Regulations prohibit the sale of any feed containing poisonous or nonnutritive ingredients that make the feed injurious when fed according to directions on the label. Regulations also prohibit including hulls, cobs, straw, or other fibrous material unless such ingredients are prominently stated on the label. Feed not in accordance with its label is considered adulterated.

**Enforcement.** Every brand of commercial feed must be registered with the State Department of Agriculture before the brand may be distributed in the state. The label which is to be attached to the feed must be submitted to the Department of Agriculture, which is authorized to sample commercial feeds or customer-formula feeds and analyze them. When an analysis reveals any misbranding or adulterating, the results of the analysis are forwarded to the distributor and the purchaser. Any company guilty of mislabeling, adulterating, or operating without a license is subject to penalty.

**Seller's liability.** A farmer whose livestock is injured by impurities, poisonous substances, or mechanical objects in the feed sometimes raises the question of the seller's liability. The law states that when a farmer buys feed from a person in the business of selling it, the sale is accompanied by an implied warranty that the feed is of merchantable quality and fit for the purpose sold. If it is not, and the buyer's livestock die, or if they get sick or are so injured by the feed that their value depreciates, the farmer can recover damages against the seller. In such cases it must be proved that the feed was imperfect at the time it was bought.

Feed is often carelessly handled on the farm — it is sometimes contaminated by other substances or spoiled by improper storage. Thus two practices will give a farmer reasonable protection: buying from a reliable dealer and being careful about handling, storing, and feeding.

**Garbage feeding.** A 1969 law provides that no garbage shall be fed to swine or any other animals or poultry on a farm where swine are kept. Farmers may, however, feed garbage from their own households, provided no meat scraps are included.

*Further information* about the regulation of the sale of commercial feeds may be secured from the State Department of Agriculture, Springfield, Illinois 62706.

#### COMMERCIAL FERTILIZERS

The analysis, labeling, and sale of commercial fertilizers and custom-mixed fertilizers in Illinois are regulated by law. The law regulates all materials recognized as plant nutrient elements, except unprocessed animal and vegetable manures and the following natural products: agricultural limestone, marl, sea solids, burnt or hydrated lime, and sewage sludge.

**Guaranteed analysis required.** All bulk, bagged, or custom-mixed fertilizer distributed in Illinois must be accompanied by a label showing the net weight, the brand and grade, guaranteed analysis, and the name and address of the registrant. Custom-mixed fertilizer distributed in bulk must, in addition, show the weight and guaranteed analysis of each commercial fertilizer used in the custom mix. No superphosphate containing less than 18 percent available phosphoric acid, nor any mixed fertilizer or custom mix in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble potash is less than 20 percent, may be distributed in the state. Specialty fertilizer (distributed primarily for nonfarm use) may contain less than 20 percent nutrients.

**Labeling, licensing, and registration.** The seller must put the above information on each bag, barrel, or package of the fertilizer. If shipments are made in bulk, the information must be attached to the invoice.

Each brand and grade of commercial fertilizer must be registered for a fee of \$5 for each grade. Each custom mixer of fertilizer in Illinois must register and pay a registration fee of \$25, unless he elects to register each mixture, paying a \$5 fee for each one. There is also an inspection fee of 10 cents a ton on each ton of fertilizer sold. These fees are paid to the State Treasury.

**Plant food deficiency and short weight.** The State Department of Agriculture may sample, inspect, analyze, and test commercial fertilizers and custom mixes to determine if the fertilizer is in compliance with the law. When any violation is found, the custom mixer or person registering the fertilizer is subject to a fine and is required to reimburse the customer.

If the official analysis of any fertilizer sold falls short of the guaranteed analysis, a penalty of three times the value of the deficiency is assessed against the manufacturer or mixer and paid to the farmer who used the fertilizer. If the State Department of Agriculture finds that any fertilizer in the possession of the consumer is short in weight, a penalty of four times the value of the shortage is assessed against the manufacturer or mixer and paid to the consumer.

*Further information concerning this law may be obtained from the State Department of Agriculture, Springfield 62706.*

#### AGRICULTURAL SEEDS

**Label requirements.** The sale of agricultural seeds in Illinois is governed by an act to "regulate the selling, offering, labeling, or exposing for sale of agricultural seeds." The law covers all commonly used seeds, including hybrid corn and vegetable seeds intended for sowing purposes. A permit is not required for the farmer who produces the seeds and sells them on the premises where they were grown or for persons selling only the packaged lines that have been packaged and distributed by a person, firm, or corporation holding a permit.

The purpose of the permit requirement is to allow inspection of agricultural seeds to prevent the sale of seed containing a high percentage of weed seeds. The law provides that the containers in which agricultural seeds are offered for sale must bear a plainly written or printed tag or label containing the following information:

1. The commonly accepted name of the kind or variety; if there are two or more components, each of which is in excess of 5 percent of the weight, the label must carry the words *mixture* or *mixed*.
2. The lot number or other lot identification.
3. The origin (*where produced*) of specified seeds such as alfalfa, white clover, red clover, and field corn (*except hybrid corn*); if their origin is unknown, the fact must be stated.
4. The percentage, by weight, of all weed seeds.
5. The names and approximate number per ounce of specified kinds of weed seed or bulblets that are present in more than the specified amounts.
6. The percentage, by weight, of agricultural seeds other than those required to be named on the label.
7. Percentage by weight of inert matter (*matter which cannot grow*).
8. Percentage of germination (*germination test*), percentage of hard seed, and calendar month and year tested.
9. The name and address of the person who labeled the seed or who offers it for sale within Illinois.

Those who sell vegetable seed must label the kind and the variety and include the name and address of the person who labeled the seed or of-

fers it for sale within Illinois. If the seed does not meet the standards for germination set by the State Department of Agriculture, a statement of the percentage of germination and of hard seed and the month and year it was tested must be given.

**Other requirements.** The law also makes it illegal to sell agricultural or vegetable seed in Illinois unless the tests required have been made within nine months of the sale, excluding the month in which the tests were made. It is also illegal to use false labels or false advertising. The sale of agricultural seed or of mixtures of agricultural seed containing any noxious weed seeds (Canada thistle, perennial sowthistle, field bindweed, leafy spurge, Russian knapweed, Johnson grass, hoary cress, sorghum alnum, marijuana, and any plant the seed of which cannot be distinguished from Johnson grass) is prohibited. This regulation does not apply to vegetable seeds.

**Enforcement.** The State Department of Agriculture is responsible for enforcing this act and making official seed analyses.

## Laws Concerning Animal Diseases

### RABIES

The State Department of Agriculture has the power and the duty to prevent the spread of rabies among dogs and other animals. Whenever a case of rabies occurs in a locality, the Department can order that all dogs in the locality be kept in an enclosure from which they cannot possibly escape, or that they be kept muzzled and on a chain or on a leash made of some indestructable material.

The Department may further order all dog owners or keepers to take such preventive measures as it may judge necessary to prevent the spread of this disease. It also has the power to determine the extent (or area) of the locality and the length of time that the preventive measures it orders shall remain in effect.

The expense of any action that the Department of Agriculture takes must be borne by the owner or keeper of the dog. Any officers who fail to carry out the provision of this act are subject to penalty.

An Illinois law concerning the liability of the owner or keeper of a rabid dog provides that unless he knows it is rabid, he can be held liable only for the direct acts of destruction or damage that the dog may cause, not for any damage from disease spread by the dog.

The owner of animals destroyed because of the rabid condition of the dog may, however, be indemnified from the county dog-license fund, as in other cases. The owner must submit proof, of course, that the animals were so destroyed.

**Rabies law (1953).** A rabies-control law provides that all dogs 4 months or more of age and not confined at all times to an enclosed area

shall be inoculated once a year or as the Department of Agriculture shall regulate. Regulations now allow for a three-year inoculation to be given.

The law gives considerable responsibility to the county board. Each board has the following duties:

1. To appoint a licensed veterinarian as a rabies inspector.
2. To authorize and appoint deputy inspectors.
3. To fix the compensation of the inspector and deputies.
4. To fix the fee to be paid by the owner for having his dog inoculated, and to fix the proportion of that fee to be paid to the county for the County Rabies Fund.
5. To remove the inspector or deputies for cause.
6. To make an annual report to the State Department of Agriculture, showing the number of rabies cases and dogs inoculated, and the fees and penalties collected.

The county board may direct the transfer of any surplus in the County Rabies Fund to the County Corporate Fund.

The inspectors and deputies appointed by the county board have these duties:

1. To enforce the act.
2. To inoculate dogs.
3. To issue certificates of inoculation (one copy for the owner, one for the file, and one for the county board).
4. To issue to owners serially numbered tags that bear the same numbers as those on the certificates.
5. To pay over a part of the fees collected to the county treasurer.
6. To impound dogs running at large that have no evidence of inoculation.
7. To give a notice of 7 days to known owners of impounded dogs to claim their dogs, after which time to dispose of the dogs or turn them over to a humane society.
8. To confine for 10 days dogs that have bitten people. If the dog is found to have had a current inoculation prior to the biting, it may be confined in the home of the owner for a similar period if, in the judgment of the veterinarian or rabies inspector, the animal need not be confined elsewhere. In any event, the dog must be confined so that it cannot bite others. At the end of 10 days the animal must be examined by the rabies inspector or a licensed veterinarian.

Although the enforcement authority is broad, the initial duty of having a dog vaccinated or confined is placed on the owner. The owner of a dog or other animal exhibiting symptoms of rabies and any dog or other animal in direct contact with such an animal must notify the rabies inspector and promptly confine such dog or other animal. This duty rests on the

owner even if the dog exhibiting the symptoms has been vaccinated. If an owner fails to do this and allows his dog to run at liberty, he may be fined as well as required to pay for the vaccination.

#### HOG CHOLERA

It is the duty of the owner or person in charge of swine who knows or suspects that hog cholera or any other contagious disease is present in the herd to use "all reasonable means" to prevent its spread. If a hog dies of cholera or is slaughtered because of it, it is the duty of the owner or person in charge either to burn the carcass immediately or bury it at least 4 feet deep or release it to a person licensed to dispose of dead animals. It is illegal to convey diseased swine, or swine known to have died of or been slaughtered because of any infectious or contagious disease, along any public highway or other public grounds or across any private lands.

Because both federal and state animal health personnel believe that modified live virus vaccine merely arrests cholera in some swine, particularly in sows who transmit it to their pigs during gestation, its use, sale, and possession has been banned in Illinois. The ban also applies to virulent live hog cholera virus and killed or inactivated hog cholera vaccines.

In an effort to eliminate hog cholera from the state, the law prohibits vaccination so that any outbreak can be identified and treated. After 12 months with no vaccinations or outbreaks of cholera, a state is recognized as hog-cholera free.

The Director of the Department of Agriculture may, when it is considered to be in the best interest of the Illinois livestock industry, allow vaccination for hog cholera. The Department may allow the importation or movement of swine treated with anti-hog-cholera serum or hog cholera antibody concentrate alone, or the Department may completely eliminate the requirement for the use of hog cholera serum or antibody concentrate.

The Department of Agriculture may order that diseased swine be destroyed. Payment by the State may not exceed half the difference between the appraised value and the salvage value of the animal; in any case, there is a fixed maximum of \$50 for grade and \$100 for registered animals.

The federal government also contributes to the payment for diseased swine that are destroyed. The amount of payment varies, depending upon the degree of freedom from the disease that the state has attained. The highest contribution is 90 percent of the appraised value of the destroyed animal, which is paid if a state is classed as disease free.

**Contagious disease among swine.** The law provides that no swine shall be brought into the State for purposes of feeding or breeding, or both, without a permit from the Illinois Department of Agriculture. However, such a permit is not required for entry of breeding swine four months of age or older. Before a permit is issued, the Department must be satisfied

that there are no reasonable grounds to suspect the existence of hog cholera or any other contagious or infectious disease of swine and that the person applying for the permit has not previously violated the act.

Application for the permit may be made by either the shipper or the receiver of the swine. The permit, valid for 72 hours after issuance, must accompany the shipment of swine, as must a certificate of health from the state of origin. The certificate of health shall be signed and issued by an approved, accredited veterinarian of the state of origin or by a veterinarian employed by the federal animal health division. The certificate shall indicate the number and description of the animals in the shipment. The receiver of the swine shall receive a copy of the certificate.

Within five days of delivery of the swine, the applicant who received the permit must return the permit to the Department of Agriculture together with the names and addresses of the persons accepting delivery and the number of swine received. All swine transported under such a permit are subject to examination.

Feeder swine are not allowed to enter the state if they have been vaccinated with virulent live hog cholera virus, modified live-virus hog cholera vaccine, or killed or inactivated hog cholera vaccine, but use of hog cholera antibody or serum is allowed. Feeder swine may enter the state only after the permit described above has been obtained.

Swine brought into the state for immediate slaughter (within seven days) may enter accompanied only by a consignment slip showing the point of origin, the number of animals, the destination, the date of shipment, and identification of the vehicle transporting them. Such swine may not be consigned from the quarantined area unless accompanied by a permit and must not have been fed garbage.

**Penalties.** Violators of these laws that govern vaccines and importation of swine may be fined and held liable for damages to those who suffered losses because of the violation.

**Licensing feeder swine dealers.** Any person who sells or offers to sell feeder swine in Illinois must obtain a license issued by the State Department of Agriculture. "Feeder swine" includes all swine except those consigned directly to slaughter or swine sold as breeding animals with negative brucellosis tests. Anyone who sells only feeder swine that he has produced and raised himself is exempt from this law. Licenses must be displayed at the place of business and renewed annually. The fee is \$25 for the initial license and \$10 for renewal. Factors considered in issuing licenses are personal character, integrity, financial responsibility, and experience. A bond of \$5,000 is required of each dealer who is not licensed under the livestock auction market law.

Licenses may be revoked for giving false information when applying for a license, willful violation of this law, conviction of crime, or making false promises through advertising or salesmen. Violators are subject to a fine.

## BRUCELLOSIS

**Cooperative plans for testing and accrediting.** By Illinois law the State Department of Agriculture is made a cooperating agency with the U.S. Department of Agriculture for the eradication of brucellosis. All owners of dairy or breeding cattle in Illinois must, upon request, allow the Department of Agriculture to test the cattle for the presence of brucellosis.

**Payment of indemnities.** Infected animals may be destroyed. For a registered purebred animal, an owner is entitled to a maximum indemnity of \$50 from the State Department of Agriculture and \$100 from the U.S. Department of Agriculture. For a grade animal, he is entitled to an indemnity of \$50 from the federal and \$25 from the state agencies.

**Quarantine of infected animals.** Infected animals that are not destroyed are subject to the quarantine rules and regulations of the State Department of Agriculture and cannot be disposed of except in compliance with its orders. Suspect animals in herds under quarantine due to infection from brucellosis may be designated as reactors by the Superintendent of Meat, Poultry, and Livestock Inspection if such action is deemed advisable and in the interest of brucellosis eradication. To enforce these rules and regulations, employees of the State Department of Agriculture may enter, during usual working hours, "any premises, barns, stables, sheds, or other places where cattle are kept."

**Shipping and sale of animals.** According to the law, "Female cattle of the beef breeds under 18 months of age for feeding and grazing purposes only may enter the state or may be shipped from public stockyards within the state without test for brucellosis. Such cattle are under quarantine. . . . They may be held in quarantine without test during their feeding and grazing period, which period shall not exceed 12 months from date of entry." Upon application to the Department, the period may be extended up to 90 days. At the expiration of the period, the cattle must be sold for immediate slaughter or tested at the owner's expense. Female cattle of the beef breeds that are 18 months or older may enter the state or be shipped from public stockyards for feeding purposes under the following conditions: (1) if they have a certificate of health stating that they have reacted negatively to the test for brucellosis within 30 days prior to entry, or are less than 24 months old and have been officially vaccinated as calves; (2) if a permit is secured for the shipment of such cattle under quarantine for immediate test within 10 days.

Before accepting any cattle for shipment within the state, except to public stockyards, the truck operator or transportation company must be furnished with a certificate of health or with a permit.

Female cattle and bulls more than 6 months old cannot be leased, loaned, traded, or sold within the state except for slaughter unless: (1) they were tested for brucellosis within 60 days before the date of sale and the test was negative; (2) they are less than 24 months old, were vac-

cinated when they were not less than 90 nor more than 210 days of age, and have an official certificate of vaccination; (3) they are in a herd that at the time of sale is certified to be free from brucellosis; or (4) they come under the Department regulation which allows for the sale of untested female cattle of the beef breeds which are less than 18 months old solely for feeding and grazing purposes.

**Other control plans recognized.** A 1947 amendment provides that any county may adopt the county area plan to eradicate the disease. This is authorized by the Animal Disease Act. However, the Department may discontinue and refuse to recognize any plan for the elimination of brucellosis in a county other than a test and slaughter plan, if it finds that less than 3 percent of the dairy and breeding cattle older than 4 months are infected. Registered purebred reactors may, upon application to the Department, be retained under quarantine.

**Ring test.** The law permits the ring test for detecting brucellosis. Animals detected as positive reactors must be given an official test; if brucellosis is confirmed, the herd must be destroyed if this is decided to be in the public interest.

**Bovine brucellosis retest for reactors.** The Bovine Brucellosis Act was amended in 1959 to provide for notifying the owner of any cattle that were shown to be reactors to the agglutination test for brucellosis. Thereafter, the owner may submit, within 15 days of the original test, a written request to the Department of Agriculture to have his entire herd retested. Upon approval by the Department, the herd may be retested at the owner's expense, the results thereof to be binding and final.

**Dairy and breeding cattle.** A 1957 amendment to the law allows cattle from modified certified brucellosis-free areas to enter the state or to be moved from any modified certified free area or certified brucellosis-free herd within the state without a test for brucellosis. The certificate of health accompanying dairy or breeding cattle must indicate that the herd from which the cattle originated had no reactors on the last complete herd test and must show such cattle to be negative to the brucellosis test within one year of date of shipment. The act formerly included only cattle from certified brucellosis-free herds.

All herd owners of dairy or breeding cattle must submit their cattle to testing upon the request of the Department and cooperate in an eradication plan, if the milk is to be legally offered for sale.

**Bison.** A 1967 law allows bison — steers, spayed heifers, and calves under six months of age — to be imported into Illinois when accompanied by an official health certificate *or* if consigned for immediate slaughter to an approved slaughtering establishment if accompanied by a consignment certificate.

*For further information on regulations for the control of brucellosis, write the Department of Agriculture, Springfield, Illinois 62706.*

## TUBERCULOSIS IN CATTLE

**State-federal program.** A program to eradicate tuberculosis in cattle is carried on cooperatively by the State Department of Agriculture and the federal government. All owners of dairy or breeding cattle in Illinois must submit their cattle to a tuberculin test upon request of the State Department of Agriculture. They must also provide the facilities necessary for making the tests and give such assistance as the Department may require. The direct expense for making the tests is paid by the Department. Cattle that react positively to the test (have tuberculosis) must be branded and tagged immediately. The owner must then keep the cattle until they are destroyed or their sale and transfer are approved.

**Payment of indemnities.** Cattle that have tuberculosis may be destroyed without the consent of the owner. The appraisal system formerly used to determine the difference between the actual value and the salvage value of the diseased cattle has been eliminated; instead, the state makes a payment of \$50 for grades and \$100 for purebreds. The U.S. Department of Agriculture will also contribute an amount based on a special formula. If the U.S. Department fails to contribute, the state will pay \$100 for grades and \$200 for purebreds. The Department may, by regulation, increase the indemnity payments if this would facilitate the program for eradication of tuberculosis.

A reasonable length of time is allowed for the registration of animals under three years of age; all other animals not registered will be considered grades.

*To be entitled to compensation* an owner must meet several requirements: (1) he must be a resident of Illinois or an Illinois taxpayer; (2) he must have complied with the law on the subject; (3) if the animal was imported into Illinois, he must show that it was tested at the time it was brought into the state and was found free of tuberculosis; (4) he must furnish proof that animals added to his herd were added in compliance with the provisions of the law; (5) he must dispose of the animal within 30 days after it has been adjudged infected; and (6) he must satisfactorily disinfect any infected premises.

**Other provisions.** Cattle owners should know these other provisions of the law covering the eradication and control of tuberculosis.

1. Owners of herds that have been found by the Department to be tuberculosis-free are entitled to a certificate showing that fact.

2. Cattle that show physical evidence of tuberculosis or are known to have been tested and to have reacted positively cannot lawfully be sold except for slaughter at establishments where federal meat inspection is maintained.

3. For feeding or grazing, female cattle of the beef breeds may be shipped into the state from a modified area or from a public stockyards without a tuberculin test, but they must be held in quarantine until re-

leased by the Department. They may be held in quarantine without test during their feeding and grazing period, which cannot, without an extension of 90 days, last longer than 12 months from the date of entry. Steers from modified areas or stockyards where known reactors are segregated are not subject to quarantine.

4. If a release permit is secured, such cattle may be shipped for immediate test by an accredited veterinarian.

5. Cattle from state and federal accredited herds, from modified accredited areas and from a tuberculosis-free state may be shipped into Illinois without undergoing quarantine if they have a certificate of health. The required content of the certificate of health varies for the three areas of origin. All cattle shipped into Illinois, except those consigned to a recognized slaughtering center for immediate slaughter, must be shipped with certificates of health.

6. The State Department of Agriculture is authorized to permit dairy and breeding cattle to enter this state from another state upon the same terms and conditions relative to bovine tuberculosis as dairy and breeding cattle from this state are permitted to enter such other state.

7. No person can legally offer milk for human consumption or for processing into products for human consumption unless the herd producing that milk has been tested for and found free of tuberculosis. Violators are subject to a maximum fine of \$500.

#### DISEASED POULTRY

No hatching eggs nor poultry, except poultry for immediate slaughter, can be imported into the state or bought, sold, or transported within the state unless they are from flocks that participate in either federal- or state-approved programs for the eradication of pullorum and fowl typhoid. Veterinarians must notify the Illinois Department of Agriculture of any flock or hatchery infected with typhoid or pullorum, and the flock must be quarantined to the farm. With the written permission of the Department of Agriculture, however, the flock may be sold for slaughter.

*For further information on regulations regarding such state or federal programs, write the Department of Agriculture, Springfield, Illinois 62706.*

#### MEAT AND POULTRY INSPECTION

All establishments where animals and poultry are slaughtered or prepared for food must be licensed. The law establishes standards for sanitation, requires proper facilities, and requires that animals and poultry must be inspected before and after slaughter. Any animal or any part not wholesome or fit for human food must be condemned.

**Exemptions.** The inspection does not apply to animals and poultry slaughtered by the owner for personal or family use.

Producers of the animals or poultry are exempt provided: (1) the producer is engaged in producing agricultural products; (2) the number of animals or poultry is in keeping with the size or volume of the farm; and

(3) all processing operations are performed by the producer on the farm where the animals or poultry were grown. To remain exempt, the producer must not: (1) actively engage in buying or trading animals or poultry; (2) actively engage directly or indirectly in any business which includes the slaughter of animals or poultry for food; (3) actively engage directly or indirectly in canning, curing, pickling, freezing, salting meat or poultry, or preparing meat or poultry products for sale; or (4) slaughter animals or poultry not owned more than 30 days.

Also exempt are retail stores selling to consumers only, 75 percent of whom are household consumers; sales to other than household consumers must be less than \$10,000 annually.

Establishments inspected by the federal inspection service are exempt.

Establishments inspected by any city are exempt if the city's inspection is equal to the state requirements.

Establishments inspected by the state or an agency of the federal government are exempt from any municipal inspection; an establishment licensed by a state or federal agency is likewise exempt from local licensing requirements.

**Enforcement.** Any meat or poultry not in compliance with the law may be seized and condemned. Any person violating the act may be fined from \$100 to \$500. For a second offense the fine is \$200 to \$1,000, or one year imprisonment, or both.

### Licensing and Regulating Disposal Plants, Livestock Auction Markets, Grain Dealers, and Marketing Programs

#### ANIMAL DISPOSAL PLANTS

All rendering or animal disposal plants in Illinois must get a license every year from the State Department of Agriculture. The Department must inspect these plants and enforce the regulations provided by the law.

**Buildings and carcasses.** These are the regulations concerning plant buildings and the disposal of carcasses:

1. All rendering and animal disposal plants must have either concrete floors or floors of some other nonabsorbent material, have adequate drainage, be thoroughly sanitary, and be adapted to carry on the business.
2. All carcasses must be processed or disposed of within 48 hours of delivery at the plant.
3. Except for proper escapes for live steam, all cooking vats must be airtight.
4. Carcasses must be skinned and dismembered within the plant.
5. Uncooked carcasses or portions thereof must not be fed to livestock.
6. Such portions of carcasses as are not entirely disposed of by cooking or burning must be disposed of by burying or in such other manner as the Department may provide.

7. When the owner of a dead animal disposes of it by burying it, the digestive tract must be punctured to permit escape of putrefactive gases, and the burial must be so deep that no part of the body is nearer than 4 feet to the natural surface of the ground. Every part of the body must be covered with lime.

**Transporting diseased animals.** Regulations concerning the transporting of animals that have died of disease are very stringent:

1. Carcasses of animals that have died of disease must be hauled in a covered vehicle bed or tank so constructed that no drippings or seepings can escape from it.

2. Vehicles loaded with the carcass of an animal that has died of disease must be driven directly to the place of disposal. The driver may, however, stop on the highway for other carcasses, but he must not drive into the yard or premises of any person without first obtaining that person's permission.

3. The driver or owner of a vehicle used in conveying animals which the driver or owner has reason to believe died of disease must immediately after unloading the animals disinfect the vehicle bed, tank, wheels, and all canvas and covers with a solution of at least one part of creosol dip to four parts of water or with some other equally effective disinfectant.

4. The Department may prohibit the removal of any animal which has died of a highly contagious, infectious, or communicable disease. Such animals may be ordered burned or buried at the site where they died.

**Responsibility of owners of dead animals.** Persons who owned or cared for an animal that has died must dispose of the carcass within twenty-four hours. Such carcass may be disposed of by cooking, burying, burning, or by release to a person licensed to dispose of dead animals.

*Further information* concerning the enforcement of this law may be obtained from the Department of Agriculture, Springfield, Illinois 62706.

#### LIVESTOCK AUCTION MARKETS

A livestock auction market, according to Illinois law, involves "any sale or exchange of livestock or other personal property held by any person at an established place of business or premises where the livestock or personal property is assembled for sale or exchange and is sold or exchanged at auction or upon a commission basis at regular or irregular intervals but more frequently than three times a year."

So far as the sale of livestock is concerned, the purpose of the law is, first, to prevent the spread of contagious animal diseases and, second, to make sure that the operator of a livestock auction market pays the sellers of livestock fully and promptly.

**License necessary.** The operator of a livestock auction market must get a license from the State Department of Agriculture which must be renewed annually. He must furnish acceptable bond or show sufficient bank deposits to indemnify livestock owners against fraudulent dealing, with-

held payments, and other irregularities. Operators are required to keep records of the receipt and disposition of all livestock.

**Inspection of premises and livestock.** Animals known to be infected with or to have been exposed to any contagious or communicable animal disease cannot be consigned to or sold through any livestock auction market. The law on brucellosis imposes restrictions on the transfer of cattle. These restrictions apply to cattle, swine, and sheep sold at auction sales. To help enforce this provision and other sections of the law relative to sanitation and animal disease, the operator of a livestock auction market must employ an approved supervising veterinarian to inspect the premises and all livestock offered for sale.

**Animals for slaughter exempt.** This act does not apply to the business of buying or assembling livestock for prompt shipment to or slaughter in any livestock market that is subject to the Federal Packers and Stockyard Act or to any market regularly inspected by the U.S. Department of Agriculture.

**Feeder and breeder swine.** All swine sold through a livestock auction market for feeding or breeding purposes must be accompanied by a certificate showing breed, color, weight, right ear identification tag, and negative brucellosis test record. Swine that react to the test for brucellosis must be sold for immediate slaughter.

**Weighing.** The weight of all livestock sold by weight at a livestock auction market or market center shall be determined at the time such livestock are sold or the ownership is transferred. The act also requires that all scales used for this weighing shall be so located as to be easily accessible for testing by the Department of Agriculture.

*Further information* concerning the law governing livestock auction markets may be had from the Department of Agriculture, Springfield, Illinois 62706.

#### GRAIN DEALERS

Illinois law requires Illinois grain dealers to be licensed by the State Department of Agriculture. The law requires evidence of financial responsibility and is intended to protect farmers from loss caused by dealer fraud or mismanagement.

Any grain dealer who buys corn, wheat, oats, rye, soybeans, barley, or grain sorghums from producers for resale or processing must be licensed. A "grain dealer" is a person or organization that owns or operates an elevator, mill, warehouse or trucks for the purchase and resale of grain. A grain producer who buys grain for his own use as seed or feed does not need a license.

This law also applies to truckers who buy and sell grain but have no principal office. They must obtain a certificate from the Department of Agriculture showing that a license has been issued and financial responsibility established. The certificate must be carried in each truck.

Licenses are issued on an annual basis. Applications must be filed with the Department of Agriculture within 90 days after the close of the grain dealer's fiscal year.

**Financial responsibility.** Every grain dealer must establish financial responsibility before he is eligible for the license. This normally will be done by filing a surety bond. The bond must equal 6 percent of the aggregate purchases of the preceding year or, in the case of a new licensee, 6 percent of his estimated aggregate purchases for the upcoming year. The minimum bond required is \$25,000 and the maximum is \$100,000.

The Department of Agriculture may waive the filing of a bond if the dealer files a financial statement showing his net worth to be at least twice the amount of the bond otherwise required. The financial statement must be certified by a licensed public accountant. A grain dealer's license may be revoked if he fails to satisfy these financial responsibility requirements.

If the dealer fails to pay any producer for grain purchased, the producer may recover the amount due him from the dealer's bond. Payment should be requested within 120 days of delivery date.

The law empowers the department to inspect a grain dealer's business premises at any time and to inspect his business books, accounts, records, and other papers during business hours.

**Penalties.** If a person does business as a grain dealer without a license or in violation of any provision of the law, he may be fined not less than \$100 and may be imprisoned for up to 6 months.

#### APPLE, PEACH, AND EGG MARKETING PROGRAMS

Provisions of the 1971 Apple and Peach Marketing Act allow Illinois apple and peach producers to adopt a marketing program to develop new markets for their commodities. A suggested program can be proposed by 200 producers or 20 percent of the producers, whichever is fewer, or the Director of Agriculture may propose a program on his own initiative. Any proposed marketing program must be discussed at public hearings held by a temporary committee appointed by the Director. If the temporary committee approves the marketing program, a referendum must be held within 90 days. The marketing program may be approved by half of the producers if they represent two-thirds of the volume of the crop or by two-thirds of the producers if they represent half of the volume of the crop.

The proposers of any marketing program or amendment may be required to deposit up to \$5,000 to cover expenses of the public hearings and the referendum.

Every marketing plan must contain provisions for a marketing board to develop and direct the program, expend funds for the activities of the program, and assess producers to defray costs. No producer may be assessed more than 5 percent of the gross amount he receives from the commodity. Any marketing plan may be abolished by a referendum requested by 20 percent of the producers or 200 producers, whichever is fewer.

An egg marketing act (1972) contains similar provisions.

## Other Regulatory Laws

### USE OF CROP SPRAYS, HERBICIDES, AND PESTICIDES

The use of certain herbicides has raised serious problems of damage to the environment and damage to neighboring crops. Unless forbidden by law, farmers have the right to use many beneficial dusts and sprays to protect crops. Care must always be used, however, to avoid damaging neighboring crops, bees, and livestock.

The law concerning damages caused by dusting and spraying is uncertain. In one case, crop dusting by airplane carried 2,4-D three-fourths of a mile and severely damaged a crop. Because of the risk of using these materials in an area close to sensitive crops or livestock, liability was imposed even though the user was not negligent or only very slightly negligent. A farmer will probably be liable for damages even if the damage is done by a commercial operator.

In response to the need to protect areas where sensitive crops constitute a principal source of income, Illinois has passed a law permitting the Department of Agriculture to regulate or forbid the use of 2,4-D in these areas. Upon petition by the county board or by 10 or more commercial producers of fruit or vegetables in an area, the Department of Agriculture may hold a public hearing. If the evidence at the hearing shows that the use of 2,4-D within the area has caused actual damage to commercial production of fruits and vegetables, and that the commercial production of fruits and vegetables constitutes one of the principal sources of agricultural income, the Department of Agriculture may issue an order regulating or forbidding the use of 2,4-D. The order may not be effective for more than two years and must fix the boundaries of the area. This law does not affect any person's liability for damages to the property of another caused by the use of 2,4-D.

Under another law the use or application of dichlorodiphenyltrichloroethane (DDT) has come under much stricter regulation than 2,4-D. Since January 1, 1970, it has been illegal to use or apply DDT unless the Director of the State Department of Agriculture has approved and issued a permit. The Director can grant a permit only when there is an immediate and serious threat by pests to the health or welfare (or both) of the citizens of Illinois and no other effective pesticide is available.

The regulation concerning DDT was issued under the Pesticides Control Law, which allows the Directors of the Departments of Agriculture and Public Health to promulgate regulations concerning the sale, use, application, or labeling of pesticides. All such proposed rules and regulations must be approved by the Interagency Committee on Pesticides after public hearings on the proposal. Membership on the Committee and its duties are described in the Pesticides Control Law.

Any person violating the Pesticides Control Law or any rules or regulations relating to that law may be fined and imprisoned up to six months. Each day's violation constitutes a separate offense.

### CUSTOM PESTICIDES APPLICATION

Under terms of a law passed in 1972, custom pesticide applicators are required to pass an examination, pay an annual license fee of \$25, and submit a performance bond to the State Department of Agriculture. The law does not apply to veterinarians, tree experts, canning establishments, those who apply pesticides to their own property, those who fumigate structures or vehicles, or farmers who apply pesticides for themselves and as many as two neighbors. Personnel of government agencies, however, must be licensed.

Licensed applicators must demonstrate that they are familiar with the proper use and application of pesticides as well as with the dangers involved and precautions needed to safeguard plant and animal life.

The purpose of the applicator licensing law is to reduce the number of cases in which the wrong chemical is used and to increase the probability that the proper strength will be applied. The law should produce a favorable impact on agricultural production and reduce wildlife kill and water pollution. Persons violating the act are guilty of a petty offense and are subject to a fine.

### REGISTRATION AND LABELING OF ECONOMIC POISONS

The historic skull and crossbones is still required on poisons, but many more requirements have been added. With the development of hundreds of new pesticides, herbicides, and other economic poisons, and their general use in agricultural production, laws and regulations have greatly increased.

All chemicals used to control insects, weeds, rodents, pest animals, or plants must be registered and labeled in accordance with the economic poison law of Illinois. The State Department of Agriculture sets the standards for registration, and every economic poison must be registered in the state before it can be sold.

The Department also has regulations on the sale of these poisons. Each one must be marked in the original unbroken container and labeled with the name of the manufacturer, brand, weight, and content. The word "poison" and a skull and crossbones prominently displayed on a red label must be included if the material is highly dangerous to man. There must also be a notation of an antidote for the particular chemicals involved.

It is unlawful to sell economic poisons that do not produce the results represented when used as directed on the label. Strength or purity must not fall below the professed standard or quality as noted on the label. Any adulteration by adding foreign substances or taking out valuable ingredients is unlawful.

A fine of as much as \$500 may be imposed for the sale of unregistered or misrepresented poisons. The penalty for violating the sales provisions of the economic poison law is the payment of a fine of \$200 for the first of-

fense and \$1,000 for subsequent offenses. Any attempt to defraud the registration authorities about the chemical contents of any poison formula is punishable by a fine of \$1,000, a jail sentence of as much as one year, or both.

#### DESTRUCTION OF NOXIOUS WEEDS

Under the Noxious Weed Law, the responsibility of determining which weeds are noxious is placed on a committee composed of the Director of the State Department of Agriculture, the Dean of the University of Illinois College of Agriculture, and the Director of the Experiment Station at the University of Illinois College of Agriculture. A list of noxious weeds is to be compiled and published in the rules and regulations of the Department of Agriculture; local weed control authorities should publish the list in newspapers in their counties.

The governing body of each county is required to establish a weed control authority and employ one or more weed control superintendents. Superintendents are to be certified by the Director of Agriculture as qualified to detect and treat noxious weeds; they also examine land and order the owner or person in control to eradicate noxious weeds. If the owner fails to do so, the weed authority may eradicate the weeds at the owner's expense and place a lien on the land until the charge is paid. Weed control superintendents may, without the consent of the owner or person in control, enter upon private lands for any reason allowable under this law.

In certain cases, in which in the judgment of the weed control authority the control of noxious weeds is beyond the ability of the owner or lessee of the land, the land may be quarantined until the weeds are eradicated. The weed control fund is used to pay for half of the expenses incurred, and the owner pays the other half.

Counties may use special tax levies for the noxious weed fund, or the funds may come from the general revenue fund of the county. Persons violating the act may be fined up to \$100 for a first offense and up to \$200 for subsequent offenses.

**Marijuana control.** All landowners and tenants have the duty to destroy marijuana before it reaches seed so that it is prevented from perpetuating itself. A fine may be imposed for failure to destroy the weed.

A person who intentionally produces marijuana can be fined and imprisoned for up to one year. First offenders, however, can receive a suspended sentence and dismissal of charges.

#### INSECT PEST AND PLANT DISEASE ACT

The purpose of this act is to prevent the introduction into and the dissemination within the state of dangerous insect pests and plant diseases. The act also establishes the power to invoke and enforce quarantines for insect pests and plant diseases. In cooperation with the USDA Plant

Protection Division, surveys are made for cereal leaf beetles, Japanese beetles, gypsy moths, and soybean cyst nematodes.

The Horticulture Inspection Section of the State Department of Agriculture has the responsibility of inspecting and certifying all nurseries growing trees, shrubs, and other ornamental plants within the state and issues Nursery Stock Dealer's permits to establishments that retail nursery stock. The section also inspects and issues permits and certificates for the shipment of plants, seeds, and various plant products into other states and countries to comply with their quarantine regulations.

#### WELLS AND ANALYSIS OF WELL WATER

Illinois law requires that wells be constructed in accordance with provisions of the Illinois Water Well Construction Code and regulations adopted to administer the Code.

Water well pump installation contractors must be licensed and pumps must be installed in accordance with the provisions of the Pump Installation Code.

It is a misdemeanor to permit an abandoned well to remain unplugged.

To further the public interest in safe water, the state has made certain services generally available. A chemical analysis of water in any well will be made by the State Water Survey, Urbana, Illinois 61801, and a bacteriological examination will be made by the State Department of Public Health, Springfield, Illinois 62706. Anyone who wants a test made should send for a sample container.

#### PROTECTION AGAINST NUISANCES

A nuisance is any act which unlawfully causes inconvenience, damage, injury to health, or offense to the senses. According to present law, it is a public nuisance to do these things:

1. To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited, or to remain in any place to the prejudice of others.
2. To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, lake, pond, spring, well, or common sewer, street, or public highway.
3. To render impure the water of any spring, river, stream, pond, or lake to the injury of others.
4. To obstruct or encroach upon public highways, private ways, and ways to burying grounds.

Though the law specifies other public nuisances, these are the ones most likely to affect farmers.

Illinois courts have declared a rendering works to be a nuisance when it did not control the offensive odors it created. They have also held that,

though every owner should enjoy reasonable use of a stream, he has no right to destroy its use to those below him. Putting a gate across a highway and building or fencing out into the road are clearly nuisances. Other acts which have traditionally been regarded as public nuisances may still be so even though not enumerated in the law.

When some one individual is the only one who suffers from the act of another, the act does not amount to a public nuisance. It may, however, amount to a private nuisance. The sufferer may then enjoin the doer or secure damages. An example is the damming of a stream in such a way as to cause it to back up on the lands of another.

#### ACCURATE WEIGHTS AND MEASURES

**General law.** The Illinois law on weights and measures provides: "The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and one or the other of these systems shall be used for all commercial purposes in this State."

The law enables cities having a population of 25,000 or more to set up a supervision and inspection service. It also specifies that the Director of the State Department of Agriculture shall maintain general supervision of all weights and measures offered for sale, sold, or in use in this state. For example, meters used to measure moisture content of grain are subject to annual tests and inspection by the Illinois Department of Agriculture. Persons found violating these and other standards of measure as established by law may be prosecuted.

**Specific laws.** Aside from the general law on weights and measures, there are some specific laws. Among their provisions are the following:

1. Commodities sold in package form must have a weight, measure, or numerical count conspicuously marked on the package to show net quantity. No qualifying term which exaggerates the amount of the commodity in a package shall be used in relation to the net quantity.
2. Butter, oleomargarine, and bread must be sold by weight.
3. Containers for milk, berries, and small fruits must meet certain standards specified by law.
4. A cord of wood must contain 128 cubic feet.

#### OBLIGATION TO GIVE STATISTICS

The State Department of Agriculture is obliged by law to "collect, compile, systematize, tabulate, and publish statistical information relating to agriculture," cooperatively with the U.S. Department of Agriculture.

Every year the State Department of Agriculture sends blank books to each county, requesting information relating to agriculture; it is a duty of the local assessors to complete and return the books. The law requires that

"each owner of farmland or his agent or tenant shall report to the assessing officer any information required pertaining to information sought by the State Department of Agriculture, pursuant to this Act." Refusal to disclose the required information is a misdemeanor, punishable by fine, imprisonment, or both.

Illinois law also requires dairy plant owners or operators to submit information on the production and marketing of dairy products.

The information obtained under these laws is for public use only after it has been compiled in such a way as to eliminate the identity of individual reports. The State Department of Agriculture, in cooperation with the U.S. Department of Agriculture publishes reports during the year at a frequency that varies from weekly to annually. Reports are available upon request without charge.

#### INSURANCE COMPANIES AND CONTRACTS

Farmers are increasingly large buyers of various kinds of insurance. How much insurance a farmer should have, what he should have it on, where he ought to get it, and what kind of policy he would find desirable are problems that he must settle for himself. But protection against weak or unscrupulous companies and faulty or unclear contracts is something that has required state action.

The Illinois legislature as early as 1869 attempted to curb some of the injurious practices that then existed by enacting a law regulating insurance companies. Since that time the insurance laws of the state have been repeatedly amended and enlarged. In 1937 the legislature adopted the Illinois Insurance Code. The Code divides all insurance into three classes: (1) life, accident, and health; (2) casualty, fidelity, and surety; and (3) fire and marine. A company doing business in this state must be classified in one of these three groups and its operations, including its organization, its financing, and its investments, are subject to the regulations contained in the code. The following section of the act is of particular interest to policy holders:

No company transacting the kind or kinds of business enumerated in class 1 [life, accident, and health] . . . shall issue or deliver in this state a policy or certificate of insurance, attach an endorsement or rider thereto, incorporate by reference by-laws or other matter therein or use an application blank, in this state until the form and content of such policy, certificate, endorsement, rider, by-law or other matter incorporated by reference or application blank has been filed with and approved by the director [of insurance]. . . It shall be the duty of the director to withhold approval of any policy, etc., . . . if it violates any provisions in this code, . . . contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed . . .

When well administered, such a provision adds greatly to the safety of insurance contracts: a purchaser buys less at his own risk, and an in-

surance company will be able to find fewer reasons for avoiding policies on slight grounds.

#### ENVIRONMENTAL PROTECTION

The Environmental Protection Act is a far-reaching and comprehensive law that supplants several earlier laws and adds new controls. The purpose of the act is to establish a unified, state-wide program supplemented by private remedies; to restore, protect, and enhance the quality of the environment; and "to assure that the adverse effects upon the environment are fully considered and borne by those who cause them."

Programs contemplated in the act include management by the state of its own pollution-creating activities, encouragement and assistance to local governments, financial assistance, promotion of environmental protection technology, and development and enforcement of a preventative program. The authority to establish and monitor standards, a list of prohibited acts, and procedures for enforcement are provided in the specific areas of air, water, public water supplies, land pollution and refuse disposal, noise, and atomic radiation.

The act creates three agencies to administer the law:

1. The Environmental Protection Agency, a division of state government with the primary functions of investigating pollution sources, measuring environmental quality, administering a system of permits, and presenting evidence of violations of the act to the Pollution Control Board.
2. The Pollution Control Board, both an administrative agency to decide cases involving individual pollution sources and a rule-making body for prescribing general regulations prohibiting pollution.
3. The Institute for Environmental Quality, which has research responsibility as its primary function.

If there is evidence that a violation of the act exists, the Environmental Protection Agency may issue a formal complaint against the violator. In addition, any private individual may file a complaint with the Pollution Control Board against any person who is thought to be in violation of the act. Upon the issuance of a complaint, the person complained against will be given an opportunity to answer the charges at a hearing conducted by the Pollution Control Board. The Board shall then issue a final order, which may include an order to terminate the polluting activity, the imposition on money penalties, or both.

Any person who violated any provision of the act, any regulations adopted by the Pollution Control Board, or any order of the Board may be liable for a penalty of up to \$10,000 for the violation and an additional penalty not to exceed \$1,000 for each day the violation continues. Moreover, an injunction may be obtained to prevent continuation of the violation.

# Appendix

## County Courthouse

### LOCAL SEAT OF GOVERNMENT

Government, like private enterprise, must have a place to carry on its business. For farm people the county is the most important local unit of government. The center of governmental activity in the county is the courthouse.

The county board is charged with the duty to erect, to keep in repair, and to maintain a county courthouse for the use of the courts of record, the county board, the states attorney, the county clerk, the county treasurer, the recorder, the sheriff, and the clerks of courts, and to provide suitable furniture for these officers. The sheriff is charged by law with the custody and care of the courthouse. He assigns space to the various officers, grants permission for the use of rooms, employs janitor and other service, and cares for the building generally.

When not all the space in the courthouse is needed for regular county officers, the board may lease rooms to public agencies (state, towns, courts, and other municipal or public corporations). Space, however, cannot be leased for private enterprises. For example, an Illinois appellate court has held that the county board did not have authority to lease space for a private abstract business.

People are interested in the county courthouse, chiefly for these reasons: (1) circuit courts are held there; (2) public sales of property for delinquent taxes are made there; (3) the administration of estates and the probate of wills are handled there, in the circuit court; (4) county officers have their offices there; and (5) many public records are kept there, the records of most general interest being those having to do with drainage districts, deeds, mortgages, security agreements, taxes, mechanics' liens, marriages, deaths, and births.

### RECORDS IN DIFFERENT OFFICES

In the *county recorder's office* the following records are to be found:

1. Deed records: these contain the recorded deeds to all property lying within the county.
2. A grantor's and grantee's index giving the names of all persons conveying or taking real estate and the volume and page where they will be found in the deed records.

3. Records (similar to deed records) of mortgages, releases, trust deeds, and security agreements.

4. Certain private and public corporation records.

In the *county clerk's office* are kept records having to do with tax assessments, payments, and sales; marriages, deaths, births; land drainage; voter registration; and many others.

In the office of the *clerk of the circuit court* are decrees of the court, many of which affect personal and property rights of county residents, and probate records.

#### PUBLIC HAS RIGHT TO EXAMINE RECORDS

Illinois law makes clear the right of the public to examine and copy various kinds of records kept in the county courthouse. This is a quotation from the law:

All records, indices, abstracts and other books kept in the office of any recorder, and all instruments deposited or left for recordation therein shall, during the office hours, be open for public inspection and examination; and all persons shall have free access for inspection and examination to such records, indices, books and instruments, which the recorders shall be bound to exhibit to those who wish to inspect or examine the same; and all persons shall have the right to take memoranda and abstracts thereof without fee or reward.

The courts have held that any member of the public is entitled, during regular office hours, to inspect and examine records, indexes, books, and instruments on file without regard to his motives and that he can expect public officials to give him a reasonable amount of assistance in finding what he wants. Officials, however, are not obligated to make extracts or copies for him. Some counties offer an extracting or duplicating service for a stipulated fee. In those counties, anyone who pays the required fees is entitled to the service.

Records of vital statistics (births, deaths, marriages, and divorces) are not available for public inspection, but the county clerk may issue a certification of the record for a proper purpose.

#### Definitions

**Assignment** — a transfer by one person to another of some interest in property. Generally refers to an unexpired term under a lease, or to something less than the whole interest in the property.

**Amortization** — a term usually applied to the reduction of a debt by pre-arranged and regular installments over a fairly long period.

**Conveyance** — transfer of legal interests in real property.

**Decedent** — a deceased person.

**Deed** — an instrument used in conveying the title to land.

**Easement** — a right acquired by an owner of one tract of land to make some use of an adjoining tract, such as the use of a roadway.

**Encumbrance** — a right possessed by another person that reduces the owner's equity in real property but does not prevent him from passing title.

**Enjoin** — prevent.

**Escrow agent** — one who assumes custody of a deed pending a land buyer's payment of the purchase price.

**Execute** — to do all that is necessary to perfect a legal document such as a deed, a mortgage, or a lease.

**Fee simple** — a type of ownership of real estate. An owner in fee simple is entitled to the entire property, with unconditional power of disposition during his life; at his death intestate (without a will) the property descends to his heirs and legal representatives.

**Joint tenancy** — ownership of property by two or more persons each of whom has a right of survivorship. Right of survivorship is the right of the surviving person or persons ("tenant" or "tenants") to take the deceased person's share immediately (see page 17). In Illinois such ownership can be created only by language which declares the conveyance is not intended to establish a tenancy in common.

**Judgment** — a decision of a court in a particular case.

**Lien** — a legal claim against specific property for some service or benefit rendered to such property.

**Misdemeanor** — a minor criminal offense punishable by a fine or a county jail sentence.

**Oral** — spoken, as distinguished from written. Some kinds of legal agreements are valid though only spoken or oral, some are not valid unless written.

**Reversion** — the interest in an estate possessed by the grantor or his heirs after a life interest has been conveyed. The term applies to real property.

**Security interest** — a legal right in personal property or fixtures to secure payment or performance of an obligation.

**Tenancy in common** — undivided ownership of real estate by two or more persons. Upon the death of a tenant in common his share in the real estate passes by inheritance (if he dies intestate) or by will. There is no right of survivorship.

**Trust** — an interest in real or personal property conveyed by one party to another to hold and manage for the benefit of those named in the conveyance.

**Vacate** — a term with two principal legal meanings: (1) the setting aside of some legal act; (2) moving from or leaving a house or farm.

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Readers wanting additional information on agricultural law may obtain single copies of the following publications from the Office of Agricultural Publications, 123 Mumford Hall, Urbana, Illinois 61801, or from a county extension adviser:

**Intergovernmental Arrangements for Water Use Regulation in Illinois.**  
Bulletin 741.

**Illinois Farm Drainage Law.** Circular 751.

**County Zoning.** Circular 776.

**Partnerships in the Farm Business.** Circular 786.

**Corporations in the Farm Business.** Circular 797.

**Legal Descriptions of Illinois Real Estate.** Circular 800.

**Farm Tenancy Laws in Illinois.** Circular 818.

**Installment Land Contracts for Farmland.** Circular 823.

**Insurance for Farmers.** Circular 832.

**Farm Property and Trusts.** Circular 842.

**Family Planning of Titles and Taxes in the Transfer of Farm Property.**  
Circular 885.

**Laws and Regulations Concerning Recreation in Rural Areas in Illinois.**  
Circular 889.

**ABC's of County Government.** Circular 933.

**The Farm Partnership in Estate Planning.** Circular 965.

**Condemnation: The Public Taking of Farm Land.** Circular 974.

**Illinois Fence Laws.** Circular 977.

**Legal Aspects of Crop Spraying.** Circular 990.

**Self-Employed Retirement Plans.** Circular 991.

**Water in Illinois — Use and Pollution Laws.** Circular 1024.

**Inheritance and Gift Taxes on Illinois Farm Property.** Circular 1062.

**Illinois Inheritance Laws, Wills, and Joint Tenancy.** Circular 1080.

Urbana, Illinois

(This circular replaces Circular 986.)

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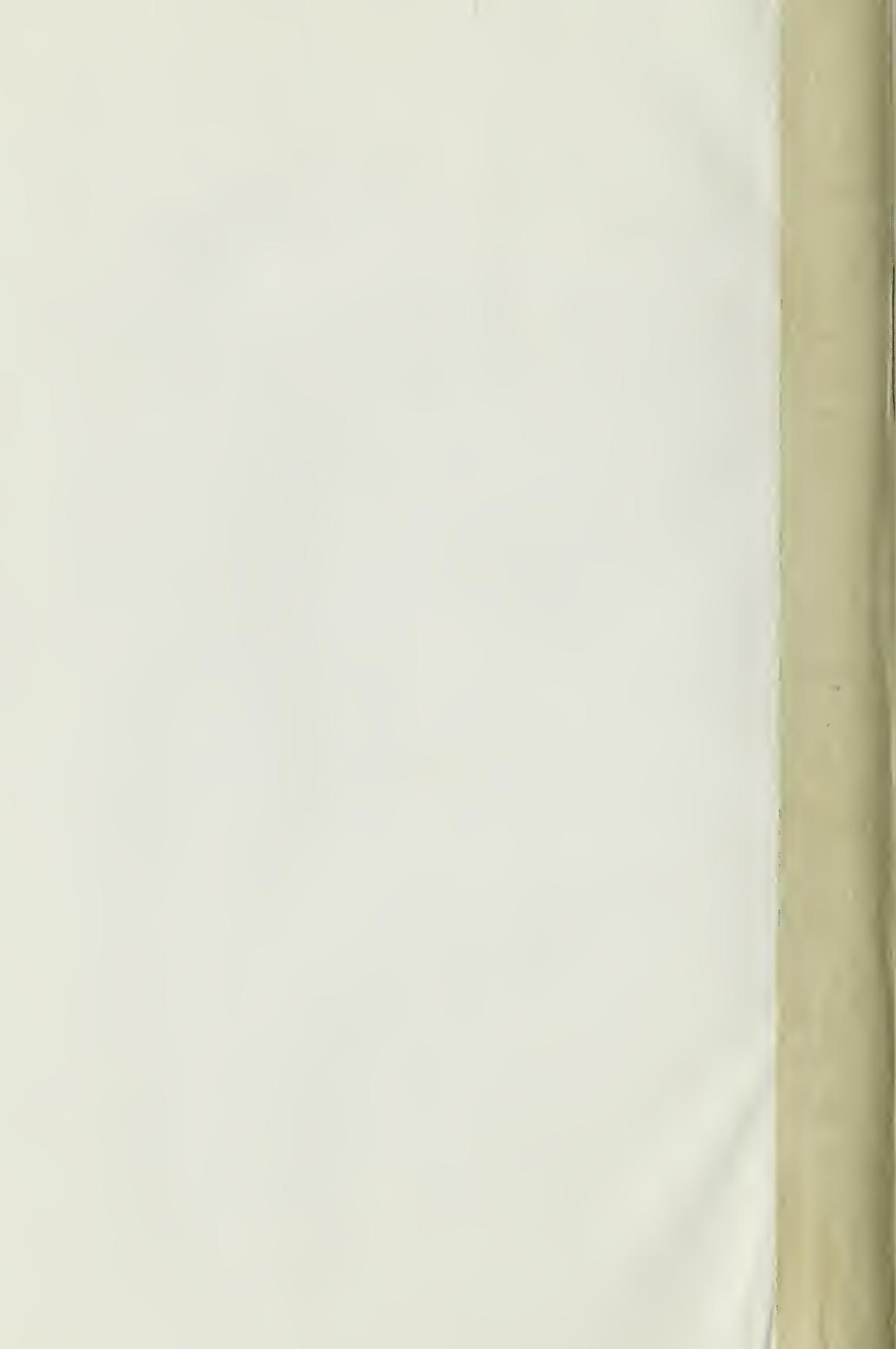
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